

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 967
Committee Substitute Favorable 5/18/05

Short Title: Health Care Power of Atty/Dispos. of Remains.

(Public)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IF A VALIDLY EXECUTED HEALTH CARE POWER OF ATTORNEY AUTHORIZES THE HEALTH CARE AGENT TO EXERCISE RIGHTS WITH RESPECT TO ANATOMICAL GIFTS, AUTOPSY, OR DISPOSITION OF THE PRINCIPAL'S REMAINS, THE AUTHORIZING PROVISION WILL CONTINUE IN EFFECT AFTER THE DEATH OF THE PRINCIPAL FOR PURPOSES OF EXERCISING THE AUTHORIZED RIGHTS, TO DEFINE "DISPOSITION OF REMAINS", AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-16 reads as rewritten:

"§ 32A-16. Definitions.

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

- (1) "Disposition of remains" means the decision to bury or cremate human remains as defined in G.S. 90-210.121(17).
- ~~(1)~~(1a) "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. "Health care" includes mental health treatment as defined in subdivision (8) of this section.
- (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.

- 1 (4) "Life-sustaining procedures" are those forms of care or treatment
2 which only serve to artificially prolong the dying process and may
3 include mechanical ventilation, dialysis, antibiotics, artificial nutrition
4 and hydration, and other forms of treatment which sustain, restore or
5 supplant vital bodily functions, but do not include care necessary to
6 provide comfort or to alleviate pain.
- 7 (5) "Principal" means the person making the health care power of
8 attorney.
- 9 (6) "Qualified witness" means a witness in whose presence the principal
10 has executed the health care power of attorney, who believes the
11 principal to be of sound mind, and who states that he (i) is not related
12 within the third degree to the principal nor to the principal's spouse,
13 (ii) does not know nor have a reasonable expectation that he would be
14 entitled to any portion of the estate of the principal upon the principal's
15 death under any existing will or codicil of the principal or under the
16 Intestate Succession Act as it then provides, (iii) is not the attending
17 physician or mental health treatment provider of the principal, nor an
18 employee of the attending physician or mental health treatment
19 provider, nor an employee of a health facility in which the principal is
20 a patient, nor an employee of a nursing home or any group-care home
21 in which the principal resides, and (iv) does not have a claim against
22 any portion of the estate of the principal at the time of the principal's
23 execution of the health care power of attorney.
- 24 (7) "Advance instruction for mental health treatment" or "advance
25 instruction" means a written instrument as defined in G.S. 122C-72(1)
26 pursuant to which the principal makes a declaration of instructions,
27 information, and preferences regarding mental health treatment.
- 28 (8) "Mental health treatment" means the process of providing for the
29 physical, emotional, psychological, and social needs of the principal
30 for the principal's mental illness. "Mental health treatment" includes,
31 but is not limited to, electroconvulsive treatment, treatment of mental
32 illness with psychotropic medication, and admission to and retention in
33 a facility for care or treatment of mental illness."

34 **SECTION 2.** G.S. 32A-20(b) reads as rewritten:

35 **"§ 32A-20. Effectiveness and duration; revocation.**

36 ...

37 (b) A Except for purposes of exercising authority granted by a health care power
38 of attorney with respect to anatomical gifts, autopsy, or disposition of remains as
39 provided in G.S. 32A-19(b), a health care power of attorney is revoked by the death of
40 the principal. A health care power of attorney may be revoked by the principal at any
41 time, so long as the principal is capable of making and communicating health care
42 decisions. The principal may exercise this right of revocation by executing and
43 acknowledging an instrument of revocation, by executing and acknowledging a
44 subsequent health care power of attorney, or in any other manner by which the principal

1 is able to communicate an intent to revoke. This revocation becomes effective only
2 upon communication by the principal to each health care agent named in the revoked
3 health care power of attorney and to the principal's attending physician or eligible
4 psychologist.

5"

6 **SECTION 3.** G.S. 32A-25 reads as rewritten:

7 **"§ 32A-25. Statutory form health care power of attorney.**

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

11 (Notice: This document gives the person you designate your health care agent broad
12 powers to make health care decisions, including mental health treatment decisions, for
13 you. Except to the extent that you express specific limitations or restrictions on the
14 authority of your health care agent, this power includes the power to consent to your
15 doctor not giving treatment or stopping treatment necessary to keep you alive, admit
16 you to a facility, and administer certain treatments and medications. This power exists
17 only as to those health care decisions for which you are unable to give informed
18 consent.

19 This form does not impose a duty on your health care agent to exercise granted
20 powers, but when a power is exercised, your health care agent will have to use due care
21 to act in your best interests and in accordance with this document. For mental health
22 treatment decisions, your health care agent will act according to how the health care
23 agent believes you would act if you were making the decision. Because the powers
24 granted by this document are broad and sweeping, you should discuss your wishes
25 concerning life-sustaining procedures, mental health treatment, and other health care
26 decisions with your health care agent.

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

32 1. Designation of health care agent.

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

34 Name: _____

35 Home Address: _____

36 Home Telephone Number _____ Work Telephone Number _____

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

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

43 A. Name: _____

44 Home Address: _____

1 Home Telephone Number _____ Work Telephone
 2 Number _____
 3 B. Name: _____
 4 Home Address: _____
 5 Home Telephone Number _____ Work Telephone
 6 Number _____

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

9 2. Effectiveness of appointment.

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

13 Absent revocation, the authority granted in this document shall become effective
14 when and if the physician or physicians designated below determine that I lack
15 sufficient understanding or capacity to make or communicate decisions relating to my
16 health care and will continue in effect during my incapacity, until my ~~death~~death,
17 except if I authorize my health care agent to exercise my rights with respect to
18 anatomical gifts, autopsy, or disposition of my remains, this authority will continue after
19 my death to the extent necessary to exercise the authority granted in this document for
20 these purposes.

21 This determination shall be made by the following physician or physicians. For
22 decisions related to mental health treatment, this determination shall be made by the
23 following physician or eligible psychologist. (You may include here a designation of
24 your choice, including your attending physician or eligible psychologist, or any other
25 physician or eligible psychologist. You may also name two or more physicians or
26 eligible psychologists, if desired, both of whom must make this determination before the
27 authority granted to the health care agent becomes effective.):

28 _____
 29 _____
 30 _____
 31 _____

32 3. General statement of authority granted.

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

- 36 A. To request, review, and receive any information, verbal or written,
 37 regarding my physical or mental health, including, but not limited to,
 38 medical and hospital records, and to consent to the disclosure of this
 39 information.
- 40 B. To employ or discharge my health care providers.
- 41 C. To consent to and authorize my admission to and discharge from a
 42 hospital, nursing or convalescent home, or other institution.
- 43 D. To consent to and authorize my admission to and retention in a facility
 44 for the care or treatment of mental illness.

- 1 E. To consent to and authorize the administration of medications for
2 mental health treatment and electroconvulsive treatment (ECT)
3 commonly referred to as "shock treatment".
- 4 F. To give consent for, to withdraw consent for, or to withhold consent
5 for, X ray, anesthesia, medication, surgery, and all other diagnostic and
6 treatment procedures ordered by or under the authorization of a
7 licensed physician, dentist, or podiatrist. This authorization
8 specifically includes the power to consent to measures for relief of
9 pain.
- 10 G. To authorize the withholding or withdrawal of life-sustaining
11 procedures when and if my physician determines that I am terminally
12 ill, permanently in a coma, suffer severe dementia, or am in a
13 persistent vegetative state. Life-sustaining procedures are those forms
14 of medical care that only serve to artificially prolong the dying process
15 and may include mechanical ventilation, dialysis, antibiotics, artificial
16 nutrition and hydration, and other forms of medical treatment which
17 sustain, restore or supplant vital bodily functions. Life-sustaining
18 procedures do not include care necessary to provide comfort or
19 alleviate pain.
- 20 I DESIRE THAT MY LIFE NOT BE PROLONGED BY
21 LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY
22 ILL, PERMANENTLY IN A COMA, SUFFER SEVERE
23 DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE
24 STATE.
- 25 H. To exercise any right I may have to make a disposition of any part or
26 all of my body for medical ~~purposes, purposes; to donate my organs, to~~
27 authorize an ~~autopsy, autopsy; to make an anatomical gift of my organs~~
28 or body, or part thereof, and to direct the disposition of my remains.
- 29 I. To take any lawful actions that may be necessary to carry out these
30 decisions, including the granting of releases of liability to medical
31 providers.

32 4. Special provisions and limitations.

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

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

1 If it becomes necessary for a court to appoint a guardian of my person, I nominate
2 my health care agent acting under this document to be the guardian of my person, to
3 serve without bond or security. The guardian shall act consistently with
4 G.S. 35A-1201(a)(5).

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

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

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

23 7. Miscellaneous provisions.

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

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

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

41 D. No act or omission of my health care agent, or of any other person,
42 institution, or facility acting in good faith in reliance on the authority
43 of my health care agent pursuant to this health care power of attorney
44 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.

_____(SEAL) _____

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

1 existing or under the Intestate Succession Act as it provided at that time, and (iii) they
2 were not a physician attending him/her, nor an employee of an attending physician, nor
3 an employee of a health facility in which he/she was a patient, nor an employee of a
4 nursing home or any group-care home in which he/she resided, and (iv) they did not
5 have a claim against him/her. I further certify that I am satisfied as to the genuineness
6 and due execution of the instrument.

7 This the _____ day of _____, ____

8
9
10 _____
11 Notary Public

12 My Commission Expires:
13 _____
14

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

17 **SECTION 4.** G.S. 130A-389(b) reads as rewritten:

18 "(b) In deaths where the Chief Medical Examiner and the medical examiner
19 investigating the case do not deem it advisable and in the public interest that an autopsy
20 be performed, but the next-of-kin of the deceased requests that an autopsy be
21 performed, the Chief Medical Examiner or a designated pathologist may perform the
22 autopsy and the cost shall be paid by the ~~next-of-kin.~~ next-of-kin, unless the deceased's
23 health care power of attorney granted authority for such decisions to the health care
24 agent."

25 **SECTION 5.** G.S. 130A-398 reads as rewritten:

26 **"§ 130A-398. Limitation on right to perform autopsy.**

27 The right to perform an autopsy shall be limited to those cases in which:

- 28 (1) The Chief Medical Examiner or a county medical examiner, acting
29 pursuant to G.S. 130A-389, directs that an autopsy be performed;
- 30 (2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has
31 given written consent for an autopsy to be performed on an unclaimed
32 body;
- 33 (3) A prosecuting officer or district attorney, acting pursuant to G.S. 15-7
34 in case of homicide, directs that an autopsy be performed;
- 35 (4) The decedent directs in writing prior to death that an autopsy be
36 performed upon the occurrence of the decedent's death;
- 37 (4a) The health care agent under a health care power of attorney with
38 authority to make decisions with respect to autopsies;
- 39 (5) The personal representative of the estate of the decedent requests that
40 an autopsy be performed upon the decedent; or
- 41 (6) Any of the following persons, in order of priority, when persons in
42 prior classes are not available at the time of death, and in the absence
43 of actual notice of contrary indications by the decedent or actual

1 opposition by a member of the same or prior class, authorizes an
2 autopsy to be performed:

- 3 a. The spouse;
4 b. Any adult child or stepchild;
5 c. Any parent or stepparents;
6 d. Any adult sibling;
7 e. A guardian of the person of the decedent at the time of the
8 decedent's death;
9 f. Any relative or person who accepts responsibility for final
10 disposition of the body by other customary and lawful
11 procedures;
12 g. Any person under obligation to dispose of the body."

13 **SECTION 6.** G.S. 130A-404(b) reads as rewritten:

14 "(b) If the decedent has not made a gift in the manner prescribed in
15 G.S. 130A-406, then any of the following persons, in order of priority stated, when
16 persons in prior classes are not available at the time of death, and in the absence of
17 actual notice of contrary indications by the decedent or actual notice of opposition by a
18 member of the same or a prior class, may give all or any part of the decedent's body for
19 any purpose specified in G.S. 130A-405.

- 20 (1) ~~The spouse;~~The health care agent under a health care power of
21 attorney with authority to make decisions with respect to anatomical
22 gifts;
23 (2) ~~An adult child;~~The spouse;
24 (3) ~~Either parent;~~An adult child;
25 (4) ~~An adult sibling;~~Either parent;
26 (5) ~~A guardian of the person of the decedent at the time of decedent's~~
27 ~~death;~~An adult sibling;
28 (6) ~~Any other person authorized or under obligation to dispose of the~~
29 ~~body.~~A guardian of the person of the decedent at the time of decedent's
30 death;
31 (7) Any other person authorized or under obligation to dispose of the
32 body."

33 **SECTION 7.** This act becomes effective October 1, 2005, and applies to
34 powers of attorney created before and after that date.