

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

3

SENATE BILL 1287*

Children & Human Resources Committee Substitute Adopted 8/6/98

House Committee Substitute Favorable 8/27/98

Short Title: Advance Instruction Corrections.

(Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING HEALTH CARE POWERS OF ATTORNEY AND ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT BASED ON RECOMMENDATIONS OF THE JOINT LEGISLATIVE HEALTH CARE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 32A reads as rewritten:

"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~~-treatment, including mental health treatment, when the individual lacks sufficient understanding or capacity to make or communicate health care decisions.

1 (c) This Article is intended and shall be construed to be consistent with the
2 provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event
3 of a conflict between the provisions of this Article and Article 23 of Chapter 90, the
4 provisions of Article 23 of Chapter 90 control. If no declaration has been executed by the
5 principal as provided in G.S. 90-321 that expressly covers the principal's present
6 condition and if the health care agent has been given the specific authority in a health
7 care power of attorney to authorize the withholding or discontinuing of life-sustaining
8 procedures when the principal is in the present condition, these procedures may be
9 withheld or discontinued as provided in the health care power of attorney upon the
10 direction and under the supervision of the attending physician. In this case, G.S. 90-322
11 does not apply.

12 (d) This Article is intended and shall be construed to be consistent with the
13 provisions of Part 3 of Article 16 of Chapter 130A of the General Statutes. In the event
14 of a conflict between the provisions of this Article and Part 3 of Article 16 of Chapter
15 130A, the provisions of Part 3 of Article 16 of Chapter 130A control.

16 **"§ 32A-16. Definitions.**

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

- 19 (1) 'Health care' means any care, treatment, service, or procedure to
20 maintain, diagnose, treat, or provide for the principal's physical or
21 mental health or personal care and comfort including, life-sustaining
22 procedures. 'Health care' includes mental health treatment as defined in
23 subdivision (8) of this section.
- 24 (2) 'Health care agent' means the person appointed as a health care attorney-
25 in-fact.
- 26 (3) 'Health care power of attorney' means a written instrument, signed in the
27 presence of two qualified witnesses, and acknowledged before a notary
28 public, pursuant to which an attorney-in-fact or agent is appointed to act
29 for the principal in matters relating to the health care of the principal,
30 and which substantially meets the requirements of this Article.
- 31 (4) 'Life-sustaining procedures' are those forms of care or treatment which
32 only serve to artificially prolong the dying process and may include
33 mechanical ventilation, dialysis, antibiotics, artificial nutrition and
34 hydration, and other forms of treatment which sustain, restore or
35 supplant vital bodily functions, but do not include care necessary to
36 provide comfort or to alleviate pain.
- 37 (5) 'Principal' means the person making the health care power of attorney.
- 38 (6) 'Qualified witness' means a witness in whose presence the principal has
39 executed the health care power of attorney, who believes the principal to
40 be of sound mind, and who states that he (i) is not related within the
41 third degree to the principal nor to the principal's spouse, (ii) does not
42 know nor have a reasonable expectation that he would be entitled to any
43 portion of the estate of the principal upon the principal's death under any

1 existing will or codicil of the principal or under the Intestate Succession
2 Act as it then provides, (iii) is not the attending physician or mental
3 health treatment provider of the principal, nor an employee of the
4 attending ~~physician~~, physician or mental health treatment provider, nor
5 an employee of a health facility in which the principal is a patient, nor
6 an employee of a nursing home or any group-care home in which the
7 principal resides, and (iv) does not have a claim against any portion of
8 the estate of the principal at the time of the principal's execution of the
9 health care power of attorney.

10 (7) 'Advance instruction for mental health treatment' or 'advance instruction'
11 means a written instrument as defined in G.S. 122C-72(1) pursuant to
12 which the principal makes a declaration of instructions, information, and
13 preferences regarding mental health treatment.

14 (8) 'Mental health treatment' means the process of providing for the
15 physical, emotional, psychological, and social needs of the principal for
16 the principal's mental illness. 'Mental health treatment' includes, but is
17 not limited to, electroconvulsive treatment, treatment of mental illness
18 with psychotropic medication, and admission to and retention in a
19 facility for care or treatment of mental illness.

20 **"§ 32A-17. Who may make a health care power of attorney.**

21 Any person having understanding and capacity to make and communicate health care
22 decisions, who is 18 years of age or older, may make a health care power of attorney.

23 **"§ 32A-18. Who may act as a health care attorney-in-fact.**

24 Any competent person who is not engaged in providing health care to the principal for
25 remuneration, and who is 18 years of age or older, may act as a health care agent.

26 **"§ 32A-19. Extent of authority; limitations of authority.**

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

36 (b) A health care power of attorney may incorporate or be combined with an
37 advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of
38 Chapter 122C of the General Statutes. A health care agent's decisions about mental
39 health treatment shall be consistent with any statements the principal has expressed in an
40 advance instruction for mental health treatment if one so exists, and if none exists, shall
41 be consistent with what the agent believes in good faith to be the manner in which the
42 principal would act if the principal did not lack sufficient understanding or capacity to
43 make or communicate health care decisions. A health care agent is not subject to

1 criminal prosecution, civil liability, or professional disciplinary action for any action
2 taken in good faith pursuant to an advance instruction for mental health treatment.

3 (b) (c) A health care power of attorney may authorize the health care agent to
4 exercise any and all rights the principal may have with respect to anatomical gifts, the
5 authorization of any autopsy, and the disposition of remains.

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

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

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

16 (g) A health care power of attorney does not limit any authority in Article 5 of
17 Chapter 122C of the General Statutes either to take a person into custody or to admit,
18 retain, or treat a person in a facility.

19 **"§ 32A-20. Effectiveness and duration; revocation.**

20 (a) A health care power of attorney shall become effective when and if the
21 physician or physicians or, in the case of mental health treatment, physician or eligible
22 psychologist as defined in G.S. 122C-3(13d), designated by the principal determine in
23 writing that the principal lacks sufficient understanding or capacity to make or
24 communicate decisions relating to the health care of the principal, and shall continue in
25 effect during the incapacity of the principal. The determination shall be made by the
26 principal's attending physician or eligible psychologist if the physician or physicians or
27 eligible psychologist designated by the principal is unavailable or is otherwise unable or
28 unwilling to make this determination or if the principal failed to designate a physician or
29 physicians or eligible psychologist to make this determination. A health care power of
30 attorney may include a provision that, if the principal does not designate a physician for
31 reasons based on his religious or moral beliefs as specified in the health care power of
32 attorney, a person designated by the principal in the health care power of attorney may
33 certify in writing, acknowledged before a notary public, that the principal lacks sufficient
34 understanding or capacity to make or communicate decisions relating to his health care.
35 The person so designated must be a competent person 18 years of age or older, not
36 engaged in providing health care to the principal for remuneration, and must be a person
37 other than the health care agent.

38 (b) A health care power of attorney is revoked by the death of the principal. A
39 health care power of attorney may be revoked by the principal at any time, so long as the
40 principal is capable of making and communicating health care decisions. The principal
41 may exercise this right of revocation by executing and acknowledging an instrument of
42 revocation, by executing and acknowledging a subsequent health care power of attorney,
43 or in any other manner by which the principal is able to communicate an intent to revoke.

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

4 (c) The authority of a health care agent who is the spouse of the principal shall be
5 revoked upon the entry by a court of a decree of divorce or separation between the
6 principal and the health care agent; provided that if the health care power of attorney
7 designates a successor health care agent, the successor shall serve as the health care
8 agent, and the health care power of attorney shall not be revoked.

9 **"§ 32A-21. Appointment, resignation, removal, and substitution.**

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

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

15 **"§ 32A-22. Relation of the health care agent to a court-appointed fiduciary and to a
16 general attorney-in-fact.**

17 (a) If, following the execution of a health care power of attorney, a court of
18 competent jurisdiction appoints a guardian of the person of the principal, or a general
19 guardian with powers over the person of the principal, the health care power of attorney
20 shall cease to be effective upon the appointment and qualification of the guardian. The
21 guardian shall act consistently with G.S. 35A-1201(a)(5).

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

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

31 (d) A health care power of attorney may be combined with or incorporated into a
32 general power of attorney which is executed in accordance with the requirements of this
33 Article.

34 **"§ 32A-23. Article 2, Chapter 32A, not applicable.**

35 The provisions of Article 2 of this Chapter shall not be applicable to a health care
36 power of attorney executed pursuant to this Article.

37 **"§ 32A-24. Reliance on health care power of attorney; defense.**

38 (a) Any physician or other health care provider involved in the medical care of the
39 principal may rely upon the authority of the health care agent contained in a signed and
40 acknowledged health care power of attorney in the absence of actual knowledge of
41 revocation of the health care power of attorney.

42 (b) All health care decisions made by a health care agent pursuant to a health care
43 power of attorney during any period following a determination that the principal lacks

1 understanding or capacity to make or communicate health care decisions shall have the
2 same effect as if the principal were not incapacitated and were present and acting on his
3 or her own behalf. Any health care provider relying in good faith on the authority of a
4 health care agent shall be protected to the full extent of the power conferred upon the
5 health care agent, and no person so relying on the authority of the health care agent shall
6 be liable, by reason of his reliance, for actions taken pursuant to a decision of the health
7 care agent.

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

15 **"§ 32A-25. Statutory form health care power of attorney.**

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

19 **'HEALTH CARE POWER OF ATTORNEY**

20
21 (Notice: This document gives the person you designate your health care agent broad
22 powers to make health care ~~decisions—~~decisions, including mental health treatment
23 decisions, for you, you. Except to the extent that you express specific limitations or
24 restrictions on the authority of your health care agent, this power includes ~~including~~—the
25 power to consent to your doctor not giving treatment or stopping treatment necessary to
26 keep you ~~alive—~~alive, admit you to a facility, and administer certain treatments and
27 medications. This power exists only as to those health care decisions for which you are
28 unable to give informed consent.

29 This form does not impose a duty on your health care agent to exercise granted
30 powers, but when a power is exercised, your health care agent will have to use due care
31 to act in your best interests and in accordance with this document. For mental health
32 treatment decisions, your health care agent will act according to how the health care
33 agent believes you would act if you were making the decision. Because the powers
34 granted by this document are broad and sweeping, you should discuss your wishes
35 concerning life-sustaining ~~procedures—~~procedures, mental health treatment, and other
36 health care decisions with your health care agent.

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

42 1. Designation of health care agent.

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

1 Name:.....

2 Home Address:.....

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

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

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

10 A. Name:.....

11 Home Address:.....

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

13 B. Name:.....

14 Home Address:.....

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

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

18 2. Effectiveness of appointment.

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

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

33

34

35

36

37

38

39

40

41 3. General statement of authority granted.

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

4 A. To request, review, and receive any information, verbal or written,
5 regarding my physical or mental health, including, but not limited to,
6 medical and hospital records, and to consent to the disclosure of this
7 information.

8 B. To employ or discharge my health care providers.

9 C. To consent to and authorize my admission to and discharge from a
10 hospital, nursing or convalescent home, or other institution.

11 D. To consent to and authorize my admission to and retention in a facility
12 for the care or treatment of mental illness.

13 E. To consent to and authorize the administration of medications for
14 mental health treatment and electroconvulsive treatment (ECT)
15 commonly referred to as "shock treatment".

16 ~~D-F.~~ To give consent for, to withdraw consent for, or to withhold consent for,
17 X ray, anesthesia, medication, surgery, and all other diagnostic and
18 treatment procedures ordered by or under the authorization of a licensed
19 physician, dentist, or podiatrist. This authorization specifically includes
20 the power to consent to measures for relief of pain.

21 ~~E-G.~~ To authorize the withholding or withdrawal of life-sustaining
22 procedures when and if my physician determines that I am terminally
23 ill, permanently in a coma, suffer severe dementia, or am in a persistent
24 vegetative state. Life-sustaining procedures are those forms of medical
25 care that only serve to artificially prolong the dying process and may
26 include mechanical ventilation, dialysis, antibiotics, artificial nutrition
27 and hydration, and other forms of medical treatment which sustain,
28 restore or supplant vital bodily functions. Life-sustaining procedures do
29 not include care necessary to provide comfort or alleviate pain.

30 I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-
31 SUSTAINING PROCEDURES IF I AM TERMINALLY ILL,
32 PERMANENTLY IN A COMA, SUFFER SEVERE
33 DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE
34 STATE.

35 ~~F-H.~~ To exercise any right I may have to make a disposition of any part or all
36 of my body for medical purposes, to donate my organs, to authorize an
37 autopsy, and to direct the disposition of my remains.

38 ~~G-I.~~ To take any lawful actions that may be necessary to carry out these
39 decisions, including the granting of releases of liability to medical
40 providers.

41 4. Special provisions and limitations.

42 (Notice: The above grant of power is intended to be as broad as possible so that your
43 health care agent will have authority to make any decisions you could make to obtain or

1 terminate any type of health care. If you wish to limit the scope of your health care
2 agent's powers, you may do so in this section.)

3 A. In exercising the authority to make health care decisions on my behalf,
4 the authority of my health care agent is subject to the following special
5 provisions and limitations (Here you may include any specific
6 limitations you deem appropriate such as: your own definition of when
7 life-sustaining treatment should be withheld or discontinued, or
8 instructions to refuse any specific types of treatment that are
9 inconsistent with your religious beliefs, or unacceptable to you for any
10 other reason.):

11
12
13
14

15 B. In exercising the authority to make mental health decisions on my
16 behalf, the authority of my health care agent is subject to the following
17 special provisions and limitations. (Here you may include any specific
18 limitations you deem appropriate such as: limiting the grant of
19 authority to make only mental health treatment decisions, your own
20 instructions regarding the administration or withholding of psychotropic
21 medications and electroconvulsive treatment (ECT), instructions
22 regarding your admission to and retention in a health care facility for
23 mental health treatment, or instructions to refuse any specific types of
24 treatment that are unacceptable to you):

25
26
27
28

29 C. (Notice: This health care power of attorney may incorporate or be
30 combined with an advance instruction for mental health treatment,
31 executed in accordance with Part 2 of Article 3 of Chapter 122C of the
32 General Statutes, which you may use to state your instructions regarding
33 mental health treatment in the event you lack sufficient understanding or
34 capacity to make or communicate mental health treatment decisions.
35 Because your health care agent's decisions about decisions must be
36 consistent with any statements you have expressed in an advance
37 instruction, you should indicate here whether you have executed an
38 advance instruction for mental health treatment.):

39
40
41
42

43 5. Guardianship provision.

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

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

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

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

22 7. Miscellaneous provisions.

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

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

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

39 D. No act or omission of my health care agent, or of any other person,
40 institution, or facility acting in good faith in reliance on the authority of
41 my health care agent pursuant to this health care power of attorney shall
42 be considered suicide, nor the cause of my death for any civil or
43 criminal purposes, nor shall it be considered unprofessional conduct or

1 as lack of professional competence. Any person, institution, or facility
2 against whom criminal or civil liability is asserted because of conduct
3 authorized by this health care power of attorney may interpose this
4 document as a defense.

5 8. Signature of principal.

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

9 (SEAL)

10 Signature of Principal Date

11
12 9. Signatures of Witnesses.

13 I hereby state that the Principal,....., being of sound mind, signed the
14 foregoing health care power of attorney in my presence, and that I am not related to the
15 principal by blood or marriage, and I would not be entitled to any portion of the estate of
16 the principal under any existing will or codicil of the principal or as an heir under the
17 Intestate Succession Act, if the principal died on this date without a will. I also state that
18 I am not the principal's attending physician, nor an employee of the principal's attending
19 physician, nor an employee of the health facility in which the principal is a patient, nor an
20 employee of a nursing home or any group care home where the principal resides. I
21 further state that I do not have any claim against the principal.

22
23 Witness:.....Date:.....

24
25 Witness:.....Date:.....

26
27 STATE OF NORTH CAROLINA

28
29 COUNTY OF.....

30
31 **CERTIFICATE**

32
33 I,....., a Notary Public for.....County, North Carolina, hereby certify
34 that.....appeared before me and swore to me and to the witnesses in my presence
35 that this instrument is a health care power of attorney, and that he/she willingly and
36 voluntarily made and executed it as his/her free act and deed for the purposes expressed
37 in it.

38 I further certify that.....and....., witnesses, appeared before me and swore
39 that they witnessed.....sign the attached health care power of attorney, believing

40 him/her to be of sound mind; and also swore that at the time they witnessed the signing
41 (i) they were not related within the third degree to him/her or his/her spouse, and

42 (ii) they did not know nor have a reasonable expectation that they would be entitled to
43 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 have
5 a claim against him/her. I further certify that I am satisfied as to the genuineness and due
6 execution of the instrument.

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

8
9

10 Notary Public

11
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 2. Part 2 of Article 3 of Chapter 122C reads as rewritten:

18 **"PART 2. ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.**

19 **"§ 122C-71. Purpose.**

20 (a) The General Assembly recognizes as a matter of public policy the fundamental
21 right of an individual to control the decisions relating to the individual's ~~medical care,~~
22 mental health care. ~~and that this right may be exercised on behalf of the individual by an agent~~
23 ~~chosen by the individual.~~

24 (b) The purpose of this Part is to establish an additional, nonexclusive method for
25 an individual to exercise the right to consent to or refuse mental health treatment when
26 the individual lacks sufficient understanding or capacity to make or communicate mental
27 health treatment decisions.

28 (c) This Part is intended and shall be construed to be consistent with the provisions
29 of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a
30 conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions
31 of this Part control.

32 **"§ 122C-72. Definitions.**

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

- 35 (1) ~~"Advance instruction" or "advance instruction for mental health~~
36 ~~treatment" means a written instrument, signed by two qualified~~
37 ~~witnesses, that makes a declaration of instructions, that also provides~~
38 ~~information and preferences regarding mental health treatment, and that~~
39 ~~may appoint an attorney in fact.~~ 'Advance instruction for mental health
40 treatment' or 'advance instruction' means a written instrument, signed in
41 the presence of two qualified witnesses who believe the principal to be
42 of sound mind at the time of the signing, and acknowledged before a
43 notary public, pursuant to which the principal makes a declaration of

1 instructions, information, and preferences regarding the principal's
2 mental health treatment and states that the principal is aware that the
3 advance instruction authorizes a mental health treatment provider to act
4 according to the instruction. It may also state the principal's instructions
5 regarding, but not limited to, consent to or refusal of mental health
6 treatment when the principal is incapable.

7 (2) 'Attending physician' means the physician who has primary
8 responsibility for the care and treatment of the principal.

9 ~~(3) "Attorney in fact" means an adult validly appointed under G.S. 122C-~~
10 ~~75 to make mental health treatment decisions for a principal under an~~
11 ~~advance instruction for mental health treatment and also means an~~
12 ~~alternative attorney in fact.~~

13 ~~(4)~~(3) 'Incapable' means that, in the opinion of a physician or eligible
14 psychologist, the person currently lacks sufficient understanding or the
15 capacity to make and communicate mental health treatment decisions.
16 As used in this ~~subdivision, Part,~~ the term 'eligible psychologist' has the
17 meaning given ~~the term~~ in G.S. 122C-3~~(43b)~~ (13d).

18 ~~(5)~~(4) 'Mental health treatment' means the process of providing for the
19 physical, emotional, psychological, and social needs of the principal for
20 the principal's mental illness. 'Mental health treatment' includes, but is
21 not limited to, electroconvulsive treatment (ECT), commonly referred to
22 as 'shock treatment', treatment of mental illness with psychotropic
23 medication, and admission to and retention in a facility for care or
24 treatment of mental illness.

25 ~~(6)~~(5) 'Principal' means the person making the advance instruction.

26 ~~(7)~~(6) 'Qualified witness' means a witness who affirms that the principal is
27 personally known to the witness, that the principal signed or
28 acknowledged the principal's signature on the advance instruction in the
29 presence of the witness, that the witness believes the principal to be of
30 sound mind and not to be under duress, fraud, or undue influence, and
31 that the witness is not:

32 a. The attending physician or mental health service provider or a
33 ~~relative~~an employee of the physician or mental health treatment
34 provider; or

35 b. An owner, operator, or ~~relative~~employee of an owner or operator
36 of a health care facility in which the principal is a patient or
37 ~~resident~~resident; or

38 c. Related within the third degree to the principal or to the
39 principal's spouse.

40 **"§ 122C-73. Scope, use, and authority of advance instruction for mental health**
41 **treatment.**

1 (a) Any adult of sound mind may make an advance instruction regarding mental
2 health treatment. The advance instruction may include consent to or refusal of mental
3 health treatment. ~~The advance instruction may also appoint an attorney in fact.~~

4 (b) An advance instruction may include, but is not limited to, the names and
5 telephone numbers of individuals to be contacted in case of a mental health crisis,
6 situations that may cause the principal to experience a mental health crisis, responses that
7 may assist the principal to remain in the principal's home during a mental health crisis,
8 the types of assistance that may help stabilize the principal if it becomes necessary to
9 enter a facility, and medications that the principal is taking or has taken in the past and
10 the effects of those medications.

11 ~~(c) A person~~ An individual shall not be required to execute or to refrain from
12 executing an advance instruction as a condition for insurance coverage, as a condition for
13 receiving mental or physical health services, as a condition for receiving privileges while
14 in a facility, or as a condition of discharge from a facility.

15 (d) A principal, through an advance instruction, may grant or withhold authority
16 for mental health treatment, including, but not limited to, the use of psychotropic
17 medication, electroconvulsive treatment, and admission to and retention in a facility for
18 the care or treatment of mental illness.

19 ~~(d)~~ (e) A principal may nominate, by advance instruction for mental health
20 treatment, the guardian of the person of the principal if a guardianship proceeding is
21 thereafter commenced. The court shall make its appointment in accordance with the
22 principal's most recent nomination in an unrevoked advance instruction for mental health
23 treatment, except for good cause shown.

24 ~~(e)~~ (f) If, following the execution of an advance instruction for mental health
25 treatment, a court of competent jurisdiction appoints a guardian of the person of the
26 principal, or a general guardian with powers over the person of the principal, the ~~advance~~
27 ~~instruction for mental health treatment shall remain in effect and shall be superior to the powers~~
28 ~~and duties of the guardian of the person with respect to mental health treatment covered under~~
29 ~~the advance instruction.~~ guardian shall follow the advance instruction consistent with G.S.
30 35A-1201(a)(5).

31 ~~(f)~~ (g) An advance instruction for mental health treatment may be combined with
32 ~~or incorporated into~~ a health care power of attorney or general power of attorney that is
33 executed in accordance with the requirements of Chapter 32A of the General Statutes.
34 Statutes so long as each form shall be executed in accordance with its own statute.

35 **"§ 122C-74. Effectiveness and duration; revocation.**

36 (a) A validly executed advance instruction becomes effective ~~when it is delivered~~
37 ~~to the principal's physician or other mental health treatment provider and remains valid~~
38 ~~until revoked or expired. The physician or provider shall act in accordance with an~~
39 ~~advance instruction when the principal has been determined to be incapable. The~~
40 ~~physician or provider shall continue to obtain the principal's informed consent to all~~
41 ~~mental health treatment decisions as required by law.~~ upon its proper execution and
42 remains valid unless revoked.

1 **(b)** The attending physician or other mental health treatment provider may
2 consider valid and rely upon an advance instruction in the absence of actual knowledge of
3 its revocation or invalidity.

4 **(c)** An attending physician or other mental health treatment provider may presume
5 that a person who executed an advance instruction in accordance with this Part was of
6 sound mind and acted voluntarily when he or she executed the advance instruction.

7 **(d)** An attending physician or other mental health treatment provider shall act in
8 accordance with an advance instruction when the principal has been determined to be
9 incapable. If a patient is incapable, an advance instruction executed in accordance with
10 this Article is presumed to be valid.

11 **(e)** The attending physician or mental health treatment provider shall continue to
12 obtain the principal's informed consent to all mental health treatment decisions when the
13 principal is capable of providing informed consent or refusal, as required by G.S. 122C-
14 57. Unless the principal is deemed incapable by the attending physician or eligible
15 psychologist, the instructions of the principal at the time of treatment shall supersede the
16 declarations expressed in the principal's advance instruction.

17 **(f)** The fact of a principal's having executed an advance instruction shall not be
18 considered an indication of a principal's capacity to make or communicate mental health
19 treatment decisions at such times as those decisions are required.

20 ~~(b)~~ **(g)** Upon being presented with an advance instruction, a-an attending physician
21 or other mental health treatment provider shall make the advance instruction a part of the
22 principal's medical record. When acting under authority of an advance instruction, a-an
23 attending physician or other mental health treatment provider shall comply with it to the
24 fullest extent possible, the advance instruction unless compliance is not consistent with:
25 unless:

26 **(1)** Best medical practice to benefit the principal;

27 **(2)** The availability of treatments requested; and

28 **(3)** Applicable law.

29 ~~If the physician or other provider is unwilling at any time to comply with any part or~~
30 ~~parts of an advance instruction for one or more of the reasons set out in subdivisions (1)~~
31 ~~through (3) of this subsection, the physician or provider shall promptly notify the~~
32 ~~principal and, if applicable, the attorney in fact, and shall document the reason for not~~
33 ~~complying with the advance instruction and shall document the notification in the~~
34 ~~principal's medical record.~~

35 ~~(e)~~ Except as provided in subsection (b) of this section, the physician or provider
36 may subject the principal to mental health treatment in a manner contrary to the
37 principal's instructions as expressed in an advance instruction for mental health treatment
38 only:

39 **(1)** If the principal is committed to a 24-hour facility pursuant to Article 5
40 of G.S. 122C and treatment is authorized in compliance with G.S.
41 122C-57 and administrative rule; or

42 **(2)** In cases of emergency endangering life or health.

- 1 (1) Compliance, in the opinion of the attending physician or other mental
2 health treatment provider, is not consistent with generally accepted
3 community practice standards of treatment to benefit the principal;
4 (2) Compliance is not consistent with the availability of treatments
5 requested;
6 (3) Compliance is not consistent with applicable law;
7 (4) The principal is committed to a 24-hour facility pursuant to Article 5 of
8 Chapter 122C of the General Statutes, and treatment is authorized in
9 compliance with G.S. 122C-57 and rules adopted pursuant to it; or
10 (5) Compliance, in the opinion of the attending physician or other mental
11 health treatment provider, is not consistent with appropriate treatment in
12 case of an emergency endangering life or health.

13 In the event that one part of the advance instruction is unable to be followed because of
14 one or more of the above, all other parts of the advance instruction shall nonetheless be
15 followed.

16 (h) If the attending physician or other mental health treatment provider is
17 unwilling at any time to comply with any part or parts of an advance instruction for one
18 or more of the reasons set out in subdivisions (1) through (5) of subsection (g), the
19 attending physician or other mental health care treatment provider shall promptly notify
20 the principal and, if applicable, the health care agent and shall document the reason for
21 not complying with the advance instruction and shall document the notification in the
22 principal's medical record.

23 ~~(d)~~ (i) An advance instruction does not limit any authority provided in Article 5 of
24 G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a
25 facility.

26 ~~(e)~~ An advance instruction for mental health treatment continues in effect for a
27 period of two years, unless revoked. An advance instruction may be revoked in whole or
28 in part at any time by the principal if the principal is capable. A revocation is effective
29 when a capable principal communicates the revocation to the attending physician or other
30 provider. (j) An advance instruction may be revoked at any time by the principal so long
31 as the principal is not incapable. The principal may exercise this right of revocation in
32 any manner by which the principal is able to communicate an intent to revoke and by
33 notifying the revocation to the treating physician or other mental health treatment
34 provider. The attending physician or other mental health treatment provider shall note the
35 revocation as part of the principal's medical record. The authority of a named attorney-
36 in fact and any alternative attorney in fact named in the advance instruction continues in
37 effect as long as the advance instruction appointing the attorney in fact is in effect or
38 until the attorney in fact has withdrawn.

39 ~~(f)~~ A physician or provider who administers or does not administer mental health
40 treatment according to and in good faith reliance upon the validity of an advance
41 instruction is not subject to criminal prosecution, civil liability, or professional
42 disciplinary action resulting from a subsequent finding of an advance instruction's
43 invalidity.

1 ~~"§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on~~
2 ~~liability.~~

3 (a) ~~An advance instruction may designate a competent adult to act as attorney-in-~~
4 ~~fact to make decisions about mental health treatment. An alternative attorney-in-fact may~~
5 ~~also be designated to act as attorney-in-fact if the original designee is unable or unwilling~~
6 ~~to act at any time. An attorney-in-fact who has accepted the appointment in writing may~~
7 ~~make decisions about mental health treatment on behalf of the principal only when the~~
8 ~~principal is incapable. The decisions shall be consistent with any desires the principal~~
9 ~~has expressed in the advance instruction.~~

10 (b) ~~None of the following may serve as attorney-in-fact:~~

11 (1) ~~The attending physician or mental health service provider or an~~
12 ~~employee of the physician or provider, if the physician, provider, or~~
13 ~~employee is unrelated to the principal by blood, marriage, or adoption.~~

14 (2) ~~An owner, operator, or employee of a health care facility in which the~~
15 ~~principal is a patient or resident, if the owner, operator, or employee is~~
16 ~~unrelated to the principal by blood, marriage, or adoption.~~

17 (c) ~~The attorney-in-fact shall not have authority to make mental health treatment~~
18 ~~decisions unless the principal is incapable.~~

19 (d) ~~The attorney-in-fact is not, as a result of acting in that capacity, personally~~
20 ~~liable for the cost of treatment provided to the principal.~~

21 (e) ~~Except to the extent the right is limited by the advance instruction or any~~
22 ~~federal law, an attorney-in-fact has the same right as the principal to receive information~~
23 ~~regarding the proposed mental health treatment and to receive, review, and consent to~~
24 ~~disclosure of medical records relating to that treatment. This right of access does not~~
25 ~~waive any evidentiary privilege.~~

26 (f) ~~In exercising authority under the advance instruction, the attorney-in-fact shall~~
27 ~~act consistently with the desires of the principal as expressed in the advance instruction.~~
28 ~~If the principal's desires are not expressed in the advance instruction and are not~~
29 ~~otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the~~
30 ~~attorney-in-fact in good faith believes to be the manner in which the principal would act~~
31 ~~if the principal was not incapable.~~

32 (g) ~~The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise~~
33 ~~affect any nonmental health treatment powers granted by the principal to a health care~~
34 ~~agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general~~
35 ~~power of attorney; provided that the mental health treatment powers granted to the~~
36 ~~attorney-in-fact shall be superior to any similar powers granted by the principal to a~~
37 ~~health care agent pursuant to a health care power of attorney or an attorney-in-fact~~
38 ~~pursuant to a general power of attorney.~~

39 (h) ~~An attorney-in-fact is not subject to criminal prosecution, civil liability, or~~
40 ~~professional disciplinary action for any action taken in good faith pursuant to an advance~~
41 ~~instruction for mental health treatment.~~

42 (i) ~~An attorney-in-fact may withdraw by giving notice to the principal. If a~~
43 ~~principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending~~

1 physician or provider. The attending physician or provider shall note the withdrawal as
2 part of the principal's medical record.

3 (j) ~~A person who has withdrawn under the provision of subsection (i) of this~~
4 ~~section may rescind the withdrawal by executing an acceptance after the date of the~~
5 ~~withdrawal. The acceptance shall be in the same or similar form as provided for in G.S.~~
6 ~~122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give~~
7 ~~notice to the principal if the principal is capable or to the principal's health care provider~~
8 ~~if the principal is incapable.~~

9 **"§ 122C-75. Reliance on advance instruction for mental health treatment.**

10 (a) An attending physician or eligible psychologist who in good faith determines
11 that the principal is or is not incapable for the purpose of deciding whether to proceed or
12 not to proceed according to an advance instruction, is not subject to criminal prosecution,
13 civil liability, or professional disciplinary action for making and acting upon that
14 determination.

15 (b) In the absence of actual knowledge of the revocation of an advance instruction,
16 no attending physician or other mental health treatment provider shall be subject to
17 criminal prosecution or civil liability or be deemed to have engaged in unprofessional
18 conduct as a result of the provision of treatment to a principal in accordance with this Part
19 unless the absence of actual knowledge resulted from the negligence of the attending
20 physician or mental health treatment provider.

21 (c) An attending physician or mental health treatment provider who administers or
22 does not administer mental health treatment according to and in good faith reliance upon
23 the validity of an advance instruction is not subject to criminal prosecution, civil liability,
24 or professional disciplinary action resulting from a subsequent finding of an advance
25 instruction's invalidity.

26 (d) No attending physician or mental health treatment provider who administers or
27 does not administer treatment under authorization obtained pursuant to this Part shall
28 incur liability arising out of a claim to the extent that the claim is based on lack of
29 informed consent or authorization for this action.

30 (e) This section shall not be construed as affecting or limiting any liability that
31 arises out of a negligent act or omission in connection with the medical diagnosis, care,
32 or treatment of a principal under an advance instruction or that arises out of any deviation
33 from reasonable medical standards.

34 **"§ 122C-76. Penalty.**

35 It is a Class 2 misdemeanor for a person, without authorization of the principal,
36 willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation
37 of an instrument, or any other evidence or document reflecting the principal's desires and
38 interests, with the intent or effect of affecting a mental health treatment decision.

39 **"§ 122C-77. Statutory form for advance instruction for mental health treatment.**

40 ~~The use of the following or similar form in the creation of an advance instruction for~~
41 ~~mental health treatment is lawful, and when used, it shall be construed in accordance with~~
42 ~~the provisions of this Article.~~

1 (a) This Part shall not be construed to invalidate an advance instruction for mental
2 health treatment that was executed prior to January 1, 1999, and was otherwise valid.

3 (b) The use of the following or similar form after the effective date of this Part in
4 the creation of an advance instruction for mental health treatment is lawful, and, when
5 used, it shall specifically meet the requirements and be construed in accordance with the
6 provisions of this Part.

7 **'ADVANCE INSTRUCTION FOR MENTAL HEALTH**
8 **TREATMENT**

9
10 I, _____, being an adult of sound mind, willfully and voluntarily make this advance
11 instruction for mental health treatment to be followed if it is determined by a physician or
12 eligible psychologist that my ability to receive and evaluate information effectively or
13 communicate decisions is impaired to such an extent that I lack the capacity to refuse or
14 consent to mental health treatment. "Mental health treatment" means the process of
15 providing for the physical, emotional, psychological, and social needs of the principal.
16 "Mental health treatment" includes electroconvulsive treatment (ECT), commonly
17 referred to as "shock treatment", treatment of mental illness with psychotropic
18 medication, and admission to and retention in a facility for care or treatment of mental
19 illness.

20
21 I understand that ~~psychoactive medications and electroconvulsive treatment (ECT) (commonly~~
22 ~~referred to as "shock treatment")~~ under G.S. 122C-57, other than for specific exceptions
23 stated there, mental health treatment may not be administered without my express and
24 informed written consent or, if I am incapable of giving my informed consent, the express
25 and informed written consent of my legally responsible person, my health care agent
26 named pursuant to a valid health care power of attorney, or attorney-in-fact named pursuant
27 to a valid advance instruction for mental health treatment, as required under G.S. 122C-57. or
28 my consent expressed in this advance instruction for mental health treatment. I
29 understand that I may become incapable of giving or withholding informed consent for
30 mental health treatment due to the symptoms of a diagnosed mental disorder. These
31 symptoms may include:

32
33 **PSYCHOACTIVE MEDICATIONS**

34
35 If I become incapable of giving or withholding informed consent for mental health
36 treatment, my instructions regarding psychoactive medications are as follows: (Place
37 initials beside choice.)

38 _____ I consent to the administration of the following medications:
39
40

41 _____ I do not consent to the administration of the following medications:
42
43

1 Conditions or limitations:
2
3

4 **ADMISSION TO AND RETENTION IN FACILITY**
5

6 If I become incapable of giving or withholding informed consent for mental health
7 treatment, my instructions regarding admission to and retention in a health care facility
8 for mental health treatment are as follows: (Place initials beside choice.)

9 _____ I consent to being admitted to a health care facility for mental health treatment.
10 My facility preference is

11 _____ I do not consent to being admitted to a health care facility for mental health
12 treatment.

13 This advance instruction cannot, by law, provide consent to retain me in a facility for
14 more than 10 days.

15 Conditions or limitations
16
17

18 **ADDITIONAL INSTRUCTIONS**
19

20 These instructions shall apply during the entire length of my incapacity.

21 In case of mental health crisis, please contact:

22 1. Name:
23 Home Address:
24 Home Telephone Number: _____ Work Telephone
25 Number:
26 Relationship to Me:

27 2. Name:
28 Home Address:
29 Home Telephone Number: _____ Work Telephone
30 Number:
31 Relationship to Me:

32 3. My Physician:
33 Name:
34 Telephone Number :

35 4. My Therapist:
36 Name:
37 Telephone Number:

38 The following may cause me to experience a mental health crisis:
39
40

41 The following may help me avoid a hospitalization:
42
43

1 I generally react to being hospitalized as follows:

2
3
4
5
6
7

4 Staff of the hospital or crisis unit can help me by doing the following:

5
6
7

8 I give permission for the following person or people to visit me:

9
10
11

12 Instructions concerning any other medical interventions, such as
13 electroconvulsive (ECT) treatment (commonly referred to as "shock
14 treatment"):

15
16
17
18

19 Other instructions:

20
21
22
23

24 _____ I have attached an additional sheet of instructions to be followed and
25 considered part of this advance instruction.

26
27

_____ ~~ATTORNEY-IN-FACT~~

28

29 ~~I hereby appoint:~~

30 ~~Name:~~

31 ~~Home Address:~~

32 ~~Home Telephone Number: _____ Work Telephone Number:~~

33 ~~to act as my attorney in fact to make decisions regarding my mental health treatment if I~~
34 ~~become incapable of giving or withholding informed consent for that treatment.~~

35 ~~If the person named above refuses or is unable to act on my behalf, or if I revoke that~~
36 ~~person's authority to act as my attorney in fact, I authorize the following person to act as~~
37 ~~my attorney in fact:~~

38 ~~Name:~~

39 ~~Home Address:~~

40 ~~Home Telephone Number: _____ Work Telephone Number:~~

41 ~~My attorney in fact is authorized to make decisions that are consistent with the~~
42 ~~instructions I have expressed in this advance instruction or, if not expressed, as are~~

1 otherwise known by my attorney in fact, my attorney in fact is to act in what he or she
2 believes to be my best interests.

3 If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my
4 attorney in fact to serve in that capacity. By signing here, I indicate that I am mentally
5 alert and competent, fully informed as to the contents of this document, and understand
6 the full import of this grant of powers to my attorney in fact.

7
8 —Signature of Principal

Date

9
10 **SHARING OF INFORMATION BY PROVIDERS**

11
12 I understand that the information in this document may be shared by my mental health
13 treatment provider with any other mental health treatment provider who may serve me
14 when necessary to provide treatment in accordance with this advance instruction.

15
16 Other instructions about sharing of information:
17
18
19

20 **SIGNATURE OF PRINCIPAL**

21
22 By signing here, I indicate that I am mentally alert and competent, fully informed as to
23 the contents of this document, and understand the full impact of having made this
24 advance instruction for mental health treatment.

25
26
27 Signature of Principal

Date

28
29 **NATURE OF WITNESSES**

30
31 I hereby state that the principal is personally known to me, that the principal signed or
32 acknowledged the principal's signature on this advance instruction for mental health
33 treatment in my presence, that the principal appears to be of sound mind and not under
34 duress, fraud, or undue influence, and that I am not:

- 35
36 a. The attending physician or mental health service provider or an
37 employee of the physician or mental health treatment provider;
38 b. An owner, operator, or employee of an owner or operator of a health
39 care facility in which the principal is a patient or resident; or
40 c. Related within the third degree to the principal or to the principal's
41 spouse.
42
43

AFFIRMATION OF WITNESSES

1
 2 We affirm that the principal is personally known to us, that the principal signed or
 3 acknowledged the principal's signature on this advance instruction for mental health
 4 treatment in our presence, that the principal appears to be of sound mind and not under
 5 duress, fraud, or undue influence, and that neither of us is:
 6 A person appointed as an attorney-in-fact by this document;
 7 The principal's attending physician or mental health service provider or a relative of the
 8 physician or provider;
 9 The owner, operator, or relative of an owner or operator of a facility in which the
 10 principal is a patient or resident; or
 11 A person related to the principal by blood, marriage, or adoption.

12 Witnessed by:

13 Witness: Date:

14 Witness: Date:

15 STATE OF NORTH CAROLINA

16 COUNTY OF

17

18 ~~ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT~~

19

20 ~~I accept this appointment and agree to serve as attorney in fact to make decisions about~~
 21 ~~mental health treatment for the principal. I understand that I have a duty to act consistent~~
 22 ~~with the desires of the principal as expressed in this appointment. I understand that this~~
 23 ~~document gives me authority to make decisions about mental health treatment only while~~
 24 ~~the principal is incapable as determined by a qualified crisis services professional and a~~
 25 ~~physician or eligible psychologist. I understand that the principal may revoke this~~
 26 ~~advance instruction in whole or in part at any time and in any manner when the principal~~
 27 ~~is not incapable.~~

28

29 ~~Signature of Attorney in fact~~ Date

30

31 ~~Signature of Alternative Attorney in fact~~ Date"

32

33 CERTIFICATION OF NOTARY PUBLIC

34

35 STATE OF NORTH CAROLINA

36 COUNTY OF

37

38 I, _____, a Notary Public for the County cited above in the State of
 39 North Carolina, hereby certify that _____ appeared before me and
 40 swore or affirmed to me and to the witnesses in my presence that this instrument is an
 41 advance instruction for mental health treatment, and that he/she willingly and voluntarily
 42 made and executed it as his/her free act and deed for the purposes expressed in it.

1 I further certify that _____ and _____, witnesses,
 2 appeared before me and swore or affirmed that they witnessed _____
 3 sign the attached advance instruction for mental health treatment, believing him/her to be
 4 of sound mind; and also swore that at the time they witnessed the signing they were not
 5 (i) the attending physician or mental health treatment provider or an employee of the
 6 physician or mental health treatment provider and (ii) they were not an owner, operator,
 7 or employee of an owner or operator of a health care facility in which the principal is a
 8 patient or resident, and (iii) they were not related within the third degree to the principal
 9 or to the principal's spouse. I further certify that I am satisfied as to the genuineness and
 10 due execution of the instrument.

11
 12 This is the _____ day of _____,
 13

14
 15 _____ Notary Public
 16

17 My Commission expires:
 18

19 NOTICE TO PERSON MAKING AN INSTRUCTION FOR MENTAL HEALTH
 20 TREATMENT
 21

22 This is an important legal document. It creates an instruction for mental health treatment.
 23 Before signing this document you should know these important facts:
 24 This document allows you to make decisions in advance about certain types of mental
 25 health treatment. The instructions you include in this declaration will be followed if a
 26 physician or eligible psychologist determines that you are incapable of making and
 27 communicating treatment decisions. Otherwise you will be considered capable to give or
 28 withhold consent for the treatments. Your instructions may be overridden if you are
 29 being held in accordance with civil commitment law. Under the Health Care Power of
 30 Attorney you may also appoint a person as your health care agent to make treatment
 31 decisions for you if you become incapable. You have the right to revoke this document
 32 at any time you have not been determined to be incapable. YOU MAY NOT REVOKE
 33 THIS ADVANCE INSTRUCTION WHEN YOU ARE FOUND INCAPABLE BY A
 34 PHYSICIAN OR OTHER AUTHORIZED MENTAL HEALTH TREATMENT
 35 PROVIDER. A revocation is effective when it is communicated to your attending
 36 physician or other provider. The physician or other provider shall note the revocation in
 37 your medical record. To be valid, this advance instruction must be signed by two
 38 qualified witnesses, personally known to you, who are present when you sign or
 39 acknowledge your signature. It must also be acknowledged before a notary public.
 40

41 **NOTICE TO PHYSICIAN OR OTHER MENTAL HEALTH TREATMENT**
 42 **PROVIDER**
 43

1 Under North Carolina law, a person may use this advance instruction to provide consent
2 for future mental health treatment if the person later becomes incapable of making those
3 decisions. Under the Health Care Power of Attorney the person may also appoint a
4 health care agent to make mental health treatment decisions for the person when
5 incapable. A person is 'incapable' when in the opinion of a physician or eligible
6 psychologist the person currently lacks sufficient understanding or capacity to make and
7 communicate mental health treatment decisions. This document becomes effective upon
8 its proper execution and remains valid unless revoked. Upon being presented with this
9 advance instruction, the physician or other provider must make it a part of the person's
10 medical record. The attending physician or other mental health treatment provider must
11 act in accordance with the statements expressed in the advance instruction when the
12 person is determined to be incapable, unless compliance is not consistent with G.S. 122C-
13 74(g). The physician or other mental health treatment provider shall promptly notify the
14 principal and, if applicable, the health care agent, and document noncompliance with any
15 part of an advance instruction in the principal's medical record. The physician or other
16 mental health treatment provider may rely upon the authority of a signed, witnessed,
17 dated, and notarized advance instruction, as provided in G.S. 122C-75."

18 Section 3. G.S. 122C-3(20) reads as rewritten:

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

29 Section 4. G.S. 122C-55 is amended by adding a new subsection to read:

30 "(e2) A responsible professional may disclose an advance instruction for mental
31 health treatment or confidential information from an advance instruction to a physician,
32 psychologist, or other qualified professional when the responsible professional
33 determines that disclosure is necessary to give effect to or provide treatment in
34 accordance with the advance instruction."

35 Section 5. G.S. 122C-57(d), (e), and (f) are amended as follows:

36 "(d) Each voluntarily admitted client, the client's legally responsible person, or a
37 health care agent named pursuant to a valid health care power of attorney, ~~or an attorney in~~
38 fact named pursuant to a valid advance instruction for mental health treatment has the right to
39 consent to or refuse any treatment offered by the facility. Consent may be withdrawn at
40 any time by the person who gave the consent. If treatment is refused, the qualified
41 professional shall determine whether treatment in some other modality is possible. If all
42 appropriate treatment modalities are refused, the voluntarily admitted client may be
43 discharged. In an emergency, a voluntarily admitted client may be administered treatment

1 or medication, other than those specified in subsection (f) of this section, despite the
2 refusal of the client, the client's legally responsible person, person, a health care agent
3 named pursuant to a valid health care power of attorney, or the client's refusal expressed
4 in a valid advance instruction for mental health treatment. ~~or an attorney in fact named~~
5 ~~pursuant to a valid advance instruction for mental health treatment.~~

6 (d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor
7 from treatment shall include notice to and consultation with the minor's legally
8 responsible person and in no event shall a minor be discharged from treatment upon the
9 minor's request alone.

10 (e) In the case of an involuntarily committed client, treatment measures other than
11 those requiring express written consent as specified in subsection (f) of this section may
12 be given despite the refusal of the client, the client's legally responsible person, a health
13 care agent named pursuant to a valid health care power of attorney, or the client's refusal
14 expressed in a valid advanced instruction for mental health treatment in the event of an
15 emergency or when consideration of side effects related to the specific treatment measure
16 is given and in the professional judgment, as documented in the client's record, of the
17 treating physician and a second physician, who is either the director of clinical services of
18 the facility, or that person's designee, either:

19 (1) The client, without the benefit of the specific treatment measure, is
20 incapable of participating in any available treatment plan which will
21 give the client a realistic opportunity of improving his condition;

22 (2) There is, without the benefit of the specific treatment measure, a
23 significant possibility that the client will harm himself or others before
24 improvement of the client's condition is realized.

25 (f) Treatment involving electroshock therapy, the use of experimental drugs or
26 procedures, or surgery other than emergency surgery may not be given without the
27 express and informed written consent of the client or the client's legally responsible
28 person, a health care agent named pursuant to a valid health care power of attorney, or the
29 client's consent expressed in a valid advanced instruction or mental health treatment. ~~or an~~
30 ~~attorney in fact named pursuant to a valid advance instruction for mental health treatment."~~

31 Section 6. G.S. 122C-211(a) is amended and new (f) is added as follows:

32 "(a) Except as provided in subsections (b) through ~~(e)~~ (f) of this section, any
33 individual in need of treatment for mental illness or substance abuse may seek voluntary
34 admission at any facility by presenting himself for evaluation to the facility.

35 (f) An individual in need of treatment for mental illness may be admitted to a
36 facility pursuant to an advance instruction for mental health treatment or pursuant to the
37 authority of a health care agent named in a valid health care power of attorney, provided
38 that the individual is incapable, as defined in G.S. 122C-72(c), at the time of the need for
39 admission. An individual admitted to a facility pursuant to an advance instruction may
40 not be retained for more than 10 days, except as provided for in subsection (b) of this
41 section. When a health care power of attorney authorizes a health care agent to seek the
42 admission of an incapable individual, the health care agent shall act for the individual in

- 1 applying for admission to a facility and in consenting to medical treatment at the facility
- 2 when consent is required, provided that the individual is incapable."
- 3 Section 7. This act becomes effective October 1, 1998.