

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1041

Short Title: Living Will Changes.

(Public)

Sponsors: Representative Holt.

Referred to: Judiciary I.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS TO THE RIGHT TO NATURAL DEATH LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-231(a) is amended by inserting a new subdivision to read:

"(2a) 'Health care' means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for a person's physical or mental health, including extraordinary means and artificial nutrition or hydration."

Sec. 2. G.S. 90-321(d) reads as rewritten:

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

'DECLARATION OF A DESIRE FOR A NATURAL DEATH'

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

~~(Initial any of the following, as desired):~~

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

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

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

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

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

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

~~"This the day of.....~~

~~Signature.....~~

~~"I hereby state that the declarant,....., being of sound mind signed the above
declaration in my presence and that I am not related to the declarant by blood or
marriage and that I do not know or have a reasonable expectation that I would be
entitled to any portion of the estate of the declarant under any existing will or codicil of
the declarant or as an heir under the Intestate Succession Act if the declarant died on
this date without a will. I also state that I am not the declarant's attending physician or
an employee of the declarant's attending physician, or an employee of a health facility in
which the declarant is a patient or an employee of a nursing home or any group care
home where the declarant resides. I further state that I do not now have any claim
against the declarant.~~

~~Witness.....~~

~~Witness....."~~

I,, being of sound mind, hereby make this declaration of my desire that my
life not be artificially prolonged, as specified below:

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

..... My physician may withhold or discontinue
(Initial) extraordinary means.

..... My physician may withhold or discontinue
(Initial) any health care including, without limitation,
extraordinary means and artificial nutrition
or hydration except health care that provides
comfort or alleviates pain.

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'If my condition is diagnosed to be a persistent vegetative state, I authorize the following:

..... My physician may withhold or discontinue
(Initial) extraordinary means.

..... My physician may withhold or discontinue
(Initial) any health care including, without limitation,
extraordinary means and artificial nutrition
or hydration except health care that provides
comfort or alleviates pain.

'I am aware that this declaration authorizes a physician to withhold or discontinue health care in accordance with the instructions provided above.

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

.....
Signature

'I hereby state that the declarant,, being of sound mind, signed the foregoing declaration in my presence. I am not related within the third degree to the declarant or to the declarant's spouse, and I do not know or have a reasonable expectation that I would be entitled to any portion of the estate of the declarant upon the declarant's death under any existing will or codicil or under the Intestate Succession Act. I am not the declarant's attending physician, an employee of the declarant's attending physician, or an employee of any health care facility, nursing home, or group care home in which the declarant is a patient or resident. I do not have a claim against the declarant.

Witness:

Witness:'

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

'CERTIFICATE'

'I,, Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as appropriate) for County hereby certify that....., the declarant, appeared before me and swore to me and to the witnesses in my presence that this instrument is ~~his~~declarant's Declaration Of A Desire

1 For A Natural Death, and that ~~he~~ declarant had willingly and voluntarily made and
2 executed it as his free act and deed for the purposes expressed in it.

3 'I further certify that and, witnesses, appeared before me and
4 swore that they witnessed, declarant, sign the attached declaration, believing
5 him to be of sound mind; and also swore that at the time they witnessed the declaration

6 (i) they were not related within the third degree to the declarant or to the
7 declarant's spouse, and (ii) they did not know or have a reasonable expectation that they
8 would be entitled to any portion of the estate of the declarant upon the declarant's death
9 under any will of the declarant or codicil thereto then existing or under the Intestate
10 Succession Act ~~as it provides at that time, Act, and~~ (iii) they were not a physician
11 attending the ~~declarant or~~ declarant, an employee of an attending ~~physician~~ physician, or
12 an employee of a health facility in which the declarant was a patient or an employee of a
13 ~~nursing home or any facility,~~ nursing home, or group-care home in which the declarant
14 ~~resided,~~ was a patient or resided, and (iv) they did not have a claim against the declarant.

15 I further certify that I am satisfied as to the genuineness and due execution of the
16 declaration.

17 'This the day of,
18 Clerk (Assistant Clerk) of Superior Court or
19 Notary Public (circle one as appropriate) for
20 the County of,
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22 The above declaration may be proved by the clerk or the assistant clerk, or a notary
23 public in the following manner:

- 24 (1) Upon the testimony of the two witnesses; or
- 25 (2) If the testimony of only one witness is available, then
 - 26 a. Upon the testimony of ~~such~~ the witness, and
 - 27 b. Upon proof of the handwriting of the witness who is dead or
 - 28 whose testimony is otherwise unavailable, and
 - 29 c. Upon proof of the handwriting of the declarant, unless ~~he~~
 - 30 signed by ~~his~~—mark; or upon proof of ~~such~~ any other
 - 31 circumstances as will satisfy the clerk or assistant clerk of the
 - 32 superior court, or a notary public as to the genuineness and due
 - 33 execution of the declaration.
- 34 (3) If the testimony of none of the witnesses is available, ~~such~~ the
- 35 declaration may be proved by the clerk or assistant clerk, or a notary
- 36 public
 - 37 a. Upon proof of the handwriting of the two witnesses whose
 - 38 testimony is unavailable, and
 - 39 b. Upon compliance with paragraph ~~e-c.~~ of subdivision (2) above.

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

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

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

7
8 **'CERTIFICATE'**
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10 'I, Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public
11 (circle one as appropriate) of..... County hereby certify that based upon the evidence
12 before me I am satisfied as to the genuineness and due execution of the attached
13 declaration by, declarant, and that the declarant's signature was witnessed
14 by....., and, who at the time of the declaration met the qualifications of
15 G.S. 90-321(c)(3).

16 'This the day of,

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18 Clerk (Assistant Clerk) of Superior Court or
19 Notary Public (circle one as appropriate) for
20 County."

21 Sec. 3. This act becomes effective July 1, 1993. Declarations made and
22 properly proved prior to this date remain in full force and effect.