

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1043

Short Title: Health Care Att'y/Anat. Gift Act.

(Public)

Sponsors: Representative Holt.

Referred to: Judiciary I.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING THE HEALTH CARE POWER OF
ATTORNEY AND THE UNIFORM ANATOMICAL GIFT ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-15 reads as rewritten:

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

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

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

(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 shall control. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of life-sustaining procedures when the principal is in the present condition, these procedures may be withheld or discontinued as provided in the health care power of attorney upon the

1 direction and under the supervision of the attending physician. In this case, G.S. 90-322
2 does not apply.

3 (d) This Article is intended and shall be construed to be consistent with the
4 provisions of Part 3 of Article 16 of Chapter 130A of the General Statutes. In the event
5 of a conflict between the provisions of this Article and Part 3 of Article 16 of Chapter
6 130A, the provisions of Part 3 of Article 16 of Chapter 130A controls."

7 Sec. 2. G.S. 32A-20 reads as rewritten:

8 **"§ 32A-20. Effectiveness and duration; revocation.**

9 (a) A health care power of attorney shall become effective when and if the
10 physician or physicians designated by the principal determine in writing that the
11 principal lacks sufficient understanding or capacity to make or communicate decisions
12 relating to the health care of the principal, and shall continue in effect during the
13 incapacity of the principal. The determination shall be made by the principal's attending
14 physician if the physician or physicians designated by the principal is unavailable or is
15 otherwise unable or unwilling to make ~~such determination.~~ this determination or if the
16 principal failed to designate a physician or physicians to make this determination. A
17 health care power of attorney may include a provision that, if the principal does not
18 designate a physician for reasons based on his religious or moral beliefs as specified in
19 the health care power of attorney, a person designated by the principal in the health care
20 power of attorney may certify in writing, acknowledged before a notary public, that the
21 principal lacks sufficient understanding or capacity to make or communicate decisions
22 relating to his health care. The person so designated must be a competent person 18
23 years of age or older, not engaged in providing health care to the principal for
24 remuneration, and must be a person other than the health care agent.

25 ~~(b) A health care power of attorney shall be revoked by the death of the principal~~
26 ~~and may be revoked by the principal at any time, so long as the principal is capable of~~
27 ~~making and communicating health care decisions. The principal may exercise such~~
28 ~~right of revocation by executing and acknowledging an instrument of revocation, by~~
29 ~~executing and acknowledging a subsequent health care power of attorney, or in any~~
30 ~~other manner by which the principal is able to communicate his or her intent to revoke.~~
31 ~~Such revocation shall become effective only upon communication by the principal to~~
32 ~~each health care agent named in the revoked health care power of attorney and to the~~
33 ~~principal's attending physician. A health care power of attorney is revoked by the death~~
34 ~~of the principal except that it continues to be effective after death if and to the extent the~~
35 ~~health care agent was authorized in the health care power of attorney to exercise rights~~
36 ~~the principal may have with respect to anatomical gifts, the authorization of any~~
37 ~~autopsy, or the disposition of remains. A health care power of attorney may be revoked~~
38 ~~by the principal at any time, so long as the principal is capable of making and~~
39 ~~communicating health care decisions. The principal may exercise this right of~~
40 ~~revocation by executing and acknowledging an instrument of revocation, by executing~~
41 ~~and acknowledging a subsequent health care power of attorney, or in any other manner~~
42 ~~by which the principal is able to communicate an intent to revoke. This revocation~~
43 ~~becomes effective only upon communication by the principal to each health care agent~~

1 named in the revoked health care power of attorney and to the principal's attending
2 physician.

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

8 Sec. 3. G.S. 32A-25 reads as rewritten:

9 **"§ 32A-25. Statutory form health care power of attorney.**

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

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

18 This form does not impose a duty on your health care agent to exercise granted
19 powers, but when a power is exercised, your health care agent will have to use due care
20 to act in your best interests and in accordance with this document. Because the powers
21 granted by this document are broad and sweeping, you should discuss your wishes
22 concerning life-sustaining procedures with your health care agent.

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

28 1. Designation of health care agent.

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

30 Name:.....

31 Home Address:.....

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

33 as my health care attorney-in-fact (herein referred to as my 'health care agent') to act for
34 me and in my name (in any way I could act in person) to make health care decisions for
35 me as authorized in this document.

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

39 A. Name:.....

40 Home Address:.....

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

42 B. Name:.....

43 Home Address:.....

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

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

3 2. Effectiveness of appointment.

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

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

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24 3. General statement of authority granted.

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

- 28 A. To request, review, and receive any information, verbal or written,
29 regarding my physical or mental health, including, but not limited to,
30 medical and hospital records, and to consent to the disclosure of this
31 information.
- 32 B. To employ or discharge my health care providers.
- 33 C. To consent to and authorize my admission to and discharge from a
34 hospital, nursing or convalescent home, or other institution.
- 35 D. To give consent for, to withdraw consent for, or to withhold consent
36 for, X ray, anesthesia, medication, surgery, and all other diagnostic and
37 treatment procedures ordered by or under the authorization of a
38 licensed physician, dentist, or podiatrist. This authorization
39 specifically includes the power to consent to measures for relief of
40 pain.
- 41 E. To authorize the withholding or withdrawal of life-sustaining
42 procedures when and if my physician determines that I am terminally
43 ill, permanently in a coma, suffer severe dementia, or am in a
44 persistent vegetative state. Life-sustaining procedures are those forms

of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions. Life-sustaining procedures do not include care necessary to provide comfort or alleviate pain.

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

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

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

4. Special provisions and limitations.

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

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

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5. Guardianship provision.

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

6. Reliance of third parties on health care agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my

- 1 estate, my heirs, successors, assigns, or personal representatives, for
2 actions or omissions by my health care agent.
- 3 B. The powers conferred on my health care agent by this document may
4 be exercised by my health care agent alone, and my health care agent's
5 signature or act under the authority granted in this document may be
6 accepted by persons as fully authorized by me and with the same force
7 and effect as if I were personally present, competent, and acting on my
8 own behalf. All acts performed in good faith by my health care agent
9 pursuant to this power of attorney are done with my consent and shall
10 have the same validity and effect as if I were present and exercised the
11 powers myself, and shall inure to the benefit of and bind me, my
12 estate, my heirs, successors, assigns, and personal representatives. The
13 authority of my health care agent pursuant to this power of attorney
14 shall be superior to and binding upon my family, relatives, friends, and
15 others.
- 16 7. Miscellaneous provisions.
- 17 A. I revoke any prior health care power of attorney.
- 18 B. My health care agent shall be entitled to sign, execute, deliver, and
19 acknowledge any contract or other document that may be necessary,
20 desirable, convenient, or proper in order to exercise and carry out any
21 of the powers described in this document and to incur reasonable costs
22 on my behalf incident to the exercise of these powers; provided,
23 however, that except as shall be necessary in order to exercise the
24 powers described in this document relating to my health care, my
25 health care agent shall not have any authority over my property or
26 financial affairs.
- 27 C. My health care agent and my health care agent's estate, heirs,
28 successors, and assigns are hereby released and forever discharged by
29 me, my estate, my heirs, successors, and assigns and personal
30 representatives from all liability and from all claims or demands of all
31 kinds arising out of the acts or omissions of my health care agent
32 pursuant to this document, except for willful misconduct or gross
33 negligence.
- 34 D. No act or omission of my health care agent, or of any other person,
35 institution, or facility acting in good faith in reliance on the authority
36 of my health care agent pursuant to this health care power of attorney
37 shall be considered suicide, nor the cause of my death for any civil or
38 criminal purposes, nor shall it be considered unprofessional conduct or
39 as lack of professional competence. Any person, institution, or facility
40 against whom criminal or civil liability is asserted because of conduct
41 authorized by this health care power of attorney may interpose this
42 document as a defense.
- 43 8. Signature of principal.

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

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8 Signature of Principal
9 '(SEAL)'

.....
Date

10 9. Signatures of Witnesses.

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

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

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

24
25 STATE OF NORTH CAROLINA

26
27 COUNTY OF.....

28
29 **CERTIFICATE**

30
31 I,....., a Notary Public for.....County, North Carolina, hereby
32 certify that.....appeared before me and swore to me and to the witnesses in my
33 presence that this instrument is a health care power of attorney, and that he/she willingly
34 and voluntarily made and executed it as his/her free act and deed for the purposes
35 expressed in it.

36 I further certify that.....and....., witnesses, appeared before me and
37 swore that they witnessed.....sign the attached health care power of attorney,
38 believing him/her to be of sound mind; and also swore that at the time they witnessed
39 the signing (i) they were not related within the third degree to him/her or his/her spouse,
40 and (ii) they did not know nor have a reasonable expectation that they would be entitled
41 to any portion of his/her estate upon his/her death under any will or codicil thereto then
42 existing or under the Intestate Succession Act as it provided at that time, and (iii) they
43 were not a physician attending him/her, nor an employee of an attending physician, nor
44 an employee of a health facility in which he/she was a patient, nor an employee of a

1 nursing home or any group-care home in which he/she resided, and (iv) they did not
2 have a claim against him/her. I further certify that I am satisfied as to the genuineness
3 and due execution of the instrument.

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

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7 Notary Public

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9 My Commission Expires:

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11
12 (A copy of this form should be given to your health care agent and any alternate
13 named in this power of attorney, and to your physician and family members.)

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

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

17
18"

19 Sec. 4. G.S. 130A-404(b) reads as rewritten:

20 "(b) Any of the following persons, in order of priority stated, when persons in
21 prior classes are not available at the time of death, and in the absence of actual notice of
22 contrary indications by the decedent or actual notice of opposition by a member of the
23 same or a prior class, may give all or any part of the decedent's body for any purpose
24 specified in G.S. 130A-405.

- 25 (1) ~~The spouse;~~
- 26 (2) ~~An adult child;~~
- 27 (3) ~~Either parent;~~
- 28 (4) ~~An adult sibling;~~
- 29 (5) ~~A guardian of the person of the decedent at the time of decedent's~~
- 30 ~~death;~~
- 31 (6) ~~Any other person authorized or under obligation to dispose of the~~
- 32 ~~body.~~
- 33 (1) A health care agent appointed pursuant to a health care power of
- 34 attorney meeting the requirements of Article 3 of Chapter 32A of the
- 35 General Statutes;
- 36 (2) A guardian of the person of the decedent at the time of decedent's
- 37 death;
- 38 (3) The spouse;
- 39 (4) An adult child;
- 40 (5) Either parent;
- 41 (6) An adult sibling;
- 42 (7) Any other person authorized or under obligation to dispose of the
- 43 body."

1 Sec. 5. This act is effective upon ratification. Powers of attorney and
2 anatomical gifts made prior to this date remain in full force and effect.