

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2343

Introduced by

Senators J. Lee, Fischer, Robinson

Representatives Gulleeson, Price, Svedjan

1 A BILL for an Act to create and enact a new section to chapter 23-06.5 of the North Dakota
2 Century Code, relating to health care directives; to amend and reenact subsection 2 of section
3 12.1-31-07 and sections 23-06.5-01, 23-06.5-02, 23-06.5-03, 23-06.5-04, 23-06.5-05,
4 23-06.5-06, 23-06.5-07, 23-06.5-08, 23-06.5-09, 23-06.5-10, 23-06.5-11, 23-06.5-12,
5 23-06.5-13, 23-06.5-15, 23-06.5-16, 23-06.5-17, and 23-06.5-18 of the North Dakota Century
6 Code, relating to health care decisions and directives; and to repeal chapter 23-06.4 of the
7 North Dakota Century Code, relating to treatment declarations.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-31-07 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 2. Except as provided for by chapters ~~23-06.4~~, 23-06.5, and 30.1-30, a caregiver who
12 knowingly performs an act that causes a disabled adult's or vulnerable elderly
13 adult's life to be endangered, health to be injured, or preexisting physical or mental
14 condition to deteriorate, or a caregiver who fails to perform acts that the caregiver
15 knows are necessary to maintain or preserve the life or health of the disabled adult
16 or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable
17 elderly adult's life to be endangered, health to be injured, or preexisting physical or
18 mental condition to deteriorate, is guilty of a class B felony.

19 **SECTION 2. AMENDMENT.** Section 23-06.5-01 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **23-06.5-01. Statement of purpose.** Every competent adult has the right and
22 responsibility to make the decisions relating to the adult's own health care, including the
23 decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to
24 enable adults to retain control over their own ~~medical~~ health care during periods of incapacity

1 through health directives and the ~~prior~~ designation of an individual to make health care
2 decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing,
3 or permit an affirmative or deliberate act or omission to end life, other than to allow the natural
4 process of dying.

5 **SECTION 3. AMENDMENT.** Section 23-06.5-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23-06.5-02. Definitions.** In this chapter, unless the context otherwise requires:

- 8 1. "Agent" means an adult to whom authority to make health care decisions is
9 delegated under a ~~durable power of attorney for health care~~ directive for the
10 individual granting the power.
- 11 2. "Attending physician" means the physician, selected by or assigned to a patient,
12 who has primary responsibility for the treatment and care of the patient.
- 13 3. "Capacity to make health care decisions" means the ability to understand and
14 appreciate the nature and consequences of a health care decision, including the
15 significant benefits and harms of and reasonable alternatives to any proposed
16 health care, and the ability to communicate a health care decision.
- 17 4. ~~"Durable power of attorney for health care" means a document delegating to an~~
18 ~~agent the authority to make health care decisions executed in accordance with the~~
19 ~~provisions of this chapter.~~
- 20 5. "Health care decision" means consent to, refusal to consent to, withdrawal of
21 consent to, or request for any care, treatment, service, or procedure to maintain,
22 diagnose, or treat an individual's physical or mental condition, including:
 - 23 a. Selection and discharge of health care providers and institutions;
 - 24 b. Approval or disapproval of diagnostic tests, surgical procedures, programs of
25 medication, and orders not to resuscitate;
 - 26 c. Directions to provide, withhold, or withdraw artificial nutrition and hydration
27 and all other forms of health care; and
 - 28 d. Establishment of an individual's abode within or without the state and
29 personal security safeguards for an individual, to the extent decisions on
30 these matters relate to the health care needs of the individual.

- 1 5. "Health care directive" means a written instrument that complies with this chapter
2 and includes one or more health care instructions, a power of attorney for health
3 care, or both.
- 4 6. "Health care instruction" means an individual's direction concerning a health care
5 decision for the individual, including a written statement of the individual's values,
6 preferences, guidelines, or directions regarding health care directed to health care
7 providers, others assisting with health care, family members, an agent, or others.
- 8 6- 7. "Health care provider" means an individual or facility licensed, certified, or
9 otherwise authorized or permitted by law to administer health care, for profit or
10 otherwise, in the ordinary course of business or professional practice.
- 11 7- 8. "Long-term care facility" or "long-term care services provider" means a long-term
12 care facility as defined in section 50-10.1-01.
- 13 8- 9. "Principal" means an adult who has executed a ~~durable power of attorney for~~
14 health care directive.

15 **SECTION 4. AMENDMENT.** Section 23-06.5-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **23-06.5-03. ~~Scope and duration of authority~~ Health care directive.**

- 18 1. A principal may execute a health care directive. A health care directive may
19 include one or more health care instructions to health care providers, others
20 assisting with health care, family members, and a health care agent. A health care
21 directive may include a power of attorney to appoint an agent to make health care
22 decisions for the principal when the principal lacks the capacity to make health
23 care decisions. Subject to the provisions of this chapter and any express
24 limitations set forth by the principal in the ~~durable power of attorney for~~ health care
25 directive, the agent has the authority to make any and all health care decisions on
26 the principal's behalf that the principal could make.
- 27 2. After consultation with the attending physician and other health care providers, the
28 agent shall make health care decisions:
- 29 a. In accordance with the agent's knowledge of the principal's wishes and
30 religious or moral beliefs, as stated orally, or as contained in the ~~durable~~

- 1 ~~power of attorney for health care or in a declaration executed pursuant to~~
2 ~~chapter 23-06.4~~ principal's health care directive; or
- 3 b. If the principal's wishes are unknown, in accordance with the agent's
4 assessment of the principal's best interests. In determining the principal's
5 best interests, the agent shall consider the principal's personal values to the
6 extent known to the agent.
- 7 3. ~~Under a durable power of attorney for health care,~~ A health care directive,
8 including the agent's authority, is in effect only when the principal lacks capacity to
9 make health care decisions, as certified in writing by the principal's attending
10 physician and filed in the principal's medical record, and ceases to be effective
11 upon a determination that the principal has recovered capacity.
- 12 4. The principal's attending physician shall make reasonable efforts to inform the
13 principal of any proposed treatment, or of any proposal to withdraw or withhold
14 treatment.
- 15 5. Nothing in this chapter permits an agent to consent to admission to a mental health
16 facility or state institution for a period of more than forty-five days without a mental
17 health proceeding or other court order, or to psychosurgery, abortion, or
18 sterilization, unless the procedure is first approved by court order.

19 **SECTION 5. AMENDMENT.** Section 23-06.5-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **23-06.5-04. Restrictions on who can act as agent.** ~~A~~ Unless related to the principal
22 by blood, marriage, or adoption, a person may not exercise the authority of agent while serving
23 in one of the following capacities:

- 24 1. The principal's health care provider unless a specific reason why the principal
25 desires a health care provider to act as an agent is provided in the health care
26 directive;
- 27 2. ~~A nonrelative of the principal who is an~~ An employee of the principal's health care
28 provider unless a specific reason why the principal desires an employee of the
29 health care provider to act as an agent is provided in the health care directive;
- 30 3. The principal's long-term care services provider; or

1 4. ~~A nonrelative of the principal who is an~~ An employee of the principal's long-term
2 care services provider.

3 **SECTION 6. AMENDMENT.** Section 23-06.5-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23-06.5-05. Health care directive requirements - Execution and witnesses.** ~~The~~
6 ~~durable power of attorney for~~

7 1. To be legally sufficient in this state, a health care directive must:

8 a. Be in writing;

9 b. Be dated;

10 c. State the principal's name;

11 d. Be executed by a principal with capacity to do so with the signature of the
12 principal or with the signature of another person authorized by the principal to
13 sign on behalf of the principal;

14 e. Contain verification of the principal's signature or the signature of the person
15 authorized by the principal to sign on behalf of the principal, either by a notary
16 public or by witnesses as provided under this chapter; and

17 f. Include a health care instruction or a power of attorney for health care, or
18 both.

19 2. A health care directive must be signed by the principal and that signature must be
20 verified by a notary public or at least two or more subscribing witnesses who are at
21 least eighteen years of age. A person notarizing the document may be an
22 employee of a health care or long-term care provider providing direct care to the
23 principal. At least one witness to the execution of the document must not be a
24 health care or long-term care provider providing direct care to the principal or an
25 employee of a health care or long-term care provider providing direct care to the
26 principal on the date of execution. The notary public or any witness may not be, at
27 the time of execution, the agent, the principal's spouse or heir, a person related to
28 the principal by blood, marriage, or adoption, a person entitled to any part of the
29 estate of the principal upon the death of the principal under a will or deed in
30 existence or by operation of law, any other person who has, at the time of
31 execution, any claims against the estate of the principal, a person directly

1 financially responsible for the principal's medical care, or the attending physician of
2 the principal. If the principal is physically unable to sign, the ~~durable power of~~
3 ~~attorney for health care~~ directive may be signed by the principal's name being
4 written by some other person in the principal's presence and at the principal's
5 express direction.

6 **SECTION 7.** A new section to chapter 23-06.5 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Suggested health care directive form.** A health care directive may include provisions
9 consistent with this chapter, including:

- 10 1. The designation of one or more alternate agents to act if the named agent is not
11 reasonably available to serve;
- 12 2. Directions to joint agents regarding the process or standards by which the agents
13 are to reach a health care decision for the principal, and a statement whether joint
14 agents may act independently of one another;
- 15 3. Limitations, if any, on the right of the agent or any alternate agents to receive,
16 review, obtain copies of, and consent to the disclosure of the principal's medical
17 records;
- 18 4. Limitations, if any, on the nomination of the agent as guardian under chapter
19 30.1-28;
- 20 5. A document of gift for the purpose of making an anatomical gift, as set forth in
21 chapter 23-06.2 or an amendment to, revocation of, or refusal to make an
22 anatomical gift;
- 23 6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on
24 the appointment of an agent;
- 25 7. Specific reasons why a principal wants a health care provider or an employee of a
26 health care provider attending the principal to be eligible to act as the principal's
27 agent; and
- 28 8. Health care instructions regarding artificially administered nutrition or hydration.

29 **SECTION 8. AMENDMENT.** Section 23-06.5-06 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **23-06.5-06. Acceptance of appointment - Withdrawal.** To be effective, the agent
2 must accept the appointment in writing. Subject to the right of the agent to withdraw, the
3 acceptance creates a duty for the agent to make health care decisions on behalf of the principal
4 at such time as the principal becomes ~~incapable~~ incapacitated. Until the principal becomes
5 ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the principal. After the
6 principal becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the
7 attending physician. The attending physician shall cause the withdrawal to be recorded in the
8 principal's medical record.

9 **SECTION 9. AMENDMENT.** Section 23-06.5-07 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **23-06.5-07. Revocation.**

- 12 1. A ~~durable power of attorney for~~ health care directive is revoked:
- 13 a. By notification by the principal to the agent or a health care or long-term care
14 services provider orally, or in writing, or by any other act evidencing a specific
15 intent to revoke the ~~power~~ directive; or
- 16 b. By execution by the principal of a subsequent ~~durable power of attorney for~~
17 health care directive.
- 18 2. A principal's health care or long-term care services provider who is informed of or
19 provided with a revocation of a ~~durable power of attorney for~~ health care directive
20 shall immediately record the revocation in the principal's medical record and notify
21 the agent, if any, the attending physician, and staff responsible for the principal's
22 care of the revocation.
- 23 3. If Unless otherwise provided in the health care directive, if the spouse is the
24 principal's agent, the divorce of the principal and spouse revokes the appointment
25 of the divorced spouse as the principal's agent.

26 **SECTION 10. AMENDMENT.** Section 23-06.5-08 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **23-06.5-08. Inspection and disclosure of medical information.** Subject to any
29 limitations set forth in the ~~durable power of attorney for~~ health care directive by the principal, an
30 agent whose authority is in effect may for the purpose of making health care decisions:

- 1 1. Request, review, and receive any information, oral or written, regarding the
- 2 principal's physical or mental health, including medical and hospital records;
- 3 2. Execute any releases or other documents which may be required in order to obtain
- 4 such medical information; and
- 5 3. Consent to the disclosure of such medical information.

6 **SECTION 11. AMENDMENT.** Section 23-06.5-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-06.5-09. ~~Action by~~ Duties of provider.**

- 9 1. A principal's health care or long-term care services provider, and employees
- 10 thereof, having knowledge of the principal's ~~durable power of attorney for health~~
- 11 care ~~directive~~, are bound to follow the ~~directives~~ health care decisions of the
- 12 principal's designated agent or a health care instruction to the extent they are
- 13 consistent with this chapter and the ~~durable power of attorney for health care~~
- 14 directive.
- 15 2. ~~If because of a moral or other conflict with a specific directive given by the agent, a~~
- 16 A principal's health care or long-term care services provider finds it impossible to
- 17 ~~follow that directive, the provider has the duty to inform the agent and if possible~~
- 18 ~~the principal, and~~ may decline to comply with a health care decision of a principal's
- 19 designated agent or a health care instruction for reasons of conscience or other
- 20 conflict. A provider that declines to comply with a health care decision or
- 21 instruction shall take all reasonable steps to transfer care of the principal to
- 22 another health care provider who is willing to honor the agent's health care
- 23 decision, or instruction or directive, and shall provide continuing care to the
- 24 principal until a transfer can be effected.
- 25 3. This chapter does not require any physician or other health care provider to take
- 26 any action contrary to reasonable medical standards.
- 27 4. This chapter does not affect the responsibility of the attending physician or other
- 28 health care provider to provide treatment for a patient's comfort, care, or alleviation
- 29 of pain.
- 30 5. Notwithstanding a contrary direction contained in a health care directive executed
- 31 under this chapter, health care must be provided to a pregnant principal unless, to

1 a reasonable degree of medical certainty as certified on the principal's medical
2 record by the attending physician and an obstetrician who has examined the
3 principal, such health care will not maintain the principal in such a way as to permit
4 the continuing development and live birth of the unborn child or will be physically
5 harmful or unreasonably painful to the principal or will prolong severe pain that
6 cannot be alleviated by medication.

7 6. In the absence of a direction to the contrary contained in a health care directive
8 prepared under this chapter, nothing in this chapter requires a physician to
9 withhold, withdraw, or administer nutrition or hydration, or both, from or to the
10 principal. Nutrition or hydration, or both, must be withdrawn, withheld, or
11 administered, if the principal for whom the administration of nutrition or hydration is
12 considered, has directed in a health care directive the principal's desire that
13 nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health
14 care directive prepared under this chapter does not indicate the principal's
15 direction with respect to nutrition or hydration, nutrition or hydration, or both, may
16 be withdrawn or withheld if the attending physician has determined that the
17 administration of nutrition or hydration is inappropriate because the nutrition or
18 hydration cannot be physically assimilated by the principal or would be physically
19 harmful or would cause unreasonable physical pain to the principal.

20 **SECTION 12. AMENDMENT.** Section 23-06.5-10 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **23-06.5-10. Freedom from influence.**

23 1. A health care provider, long-term care services provider, health care service plan,
24 insurer issuing disability insurance, self-insured employee welfare benefit plan, or
25 nonprofit hospital service plan may not charge a person a different rate or require
26 any person to execute a ~~durable power of attorney for health care~~ directive as a
27 condition of admission to a hospital or long-term care facility nor as a condition of
28 being insured for, or receiving, health care or long-term care services. Health care
29 or long-term care services may not be refused because a person has executed a
30 ~~durable power of attorney for health care~~ directive.

1 2. ~~A durable power of attorney for health care~~ The appointment of an agent is not
2 effective if, at the time of execution, the principal is a resident of a long-term care
3 facility unless a recognized member of the clergy, an attorney licensed to practice
4 in this state, or a person as may be designated by the department of human
5 services or the district court for the county in which the facility is located, signs a
6 statement affirming that the person has explained the nature and effect of the
7 ~~durable power of attorney for health care~~ appointment to the principal or unless the
8 principal acknowledges in writing that the principal has read ~~the explanation~~
9 ~~prefacing the statutory form in section 23-06.5-17 or a similar~~ written explanation of
10 the nature and effect of a ~~durable power of attorney for health care~~ the
11 appointment. ~~It is the intent of this subsection to recognize that some residents of~~
12 ~~long term care facilities are insulated from a voluntary decisionmaking role, by~~
13 ~~virtue of the custodial nature of their care, so as to require special assurance that~~
14 ~~they are capable of willingly and voluntarily executing a durable power of attorney~~
15 ~~for health care.~~

16 3. ~~A durable power of attorney for health care~~ The appointment of an agent is not
17 effective if, at the time of execution, the principal is being admitted to or is a patient
18 in a hospital unless a person designated by the hospital or an attorney licensed to
19 practice in this state signs a statement that the person has explained the nature
20 and effect of the ~~durable power of attorney for health care~~ appointment to the
21 principal or unless the principal acknowledges in writing that the principal has read
22 ~~the explanation prefacing the statutory form in section 23-06.5-17 or a similar~~
23 written explanation of the nature and effect of a ~~durable power of attorney for~~
24 ~~health care~~ the appointment.

25 **SECTION 13. AMENDMENT.** Section 23-06.5-11 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **23-06.5-11. Reciprocity.** This chapter does not limit the enforceability of a ~~durable~~
28 ~~power of attorney for health care~~ directive or similar instrument executed in another state or
29 jurisdiction in compliance with the law of that state or jurisdiction.

30 **SECTION 14. AMENDMENT.** Section 23-06.5-12 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **23-06.5-12. Immunity.**

- 2 1. A person acting as agent pursuant to a ~~durable power of attorney for health care~~
3 directive or person authorized to provide informed consent pursuant to section
4 23-12-13 may not be subjected to criminal or civil liability for making a health care
5 decision in good faith pursuant to the ~~terms of the durable power of attorney for~~
6 ~~health care and the provisions of this chapter or section 23-12-13.~~
- 7 2. A health care or long-term care services provider, or any other person acting for
8 the provider or under the provider's control may not be subjected to civil or criminal
9 liability, or be deemed to have engaged in unprofessional conduct, for any act or
10 intentional failure to act done in good faith and with ordinary care if the act or
11 intentional failure to act is done pursuant to the dictates of ~~the durable power of~~
12 ~~attorney for a~~ health care directive, the directives of the patient's agent, ~~and the or~~
13 other provisions of this chapter or section 23-12-13.
- 14 3. A health care provider who administers health care necessary to keep the principal
15 alive, despite a health care decision of the agent to withhold or withdraw that
16 health care, or a health care provider who withholds health care that the provider
17 has determined to be contrary to reasonable medical standards, despite a health
18 care decision of the agent to provide the health care, may not be subjected to civil
19 or criminal liability or be deemed to have engaged in unprofessional conduct if that
20 health care provider promptly took all reasonable steps to:
- 21 a. Notify the agent of the health care provider's unwillingness to comply;
22 b. Document the notification in the principal's medical record; and
23 c. Arrange to transfer care of the principal to another health care provider willing
24 to comply with the decision of the agent.

25 **SECTION 15. AMENDMENT.** Section 23-06.5-13 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **23-06.5-13. Guardianship authority—Conflicting declaration Presumptions and**
28 **application.**

- 29 1. Unless a court of competent jurisdiction determines otherwise, a ~~durable power of~~
30 ~~attorney for health care~~ the appointment of an agent in a health care directive

- 1 executed pursuant to this chapter takes precedence over any authority to make
2 medical decisions granted to a guardian pursuant to chapter 30.1-28.
- 3 2. ~~To the extent a durable power of attorney for health care conflicts with a~~
4 ~~declaration executed in accordance with chapter 23-06.4 that health care~~
5 directives conflict, the instrument executed later in time controls.
- 6 3. The principal is presumed to have the capacity to execute a health care directive
7 and to revoke a health care directive, absent clear and convincing evidence to the
8 contrary.
- 9 4. A health care provider or agent may presume that a health care directive is legally
10 sufficient absent actual knowledge to the contrary. A health care directive is
11 presumed to be properly executed, absent clear and convincing evidence to the
12 contrary.
- 13 5. An agent and a health care provider acting pursuant to the direction of an agent
14 are presumed to be acting in good faith, absent clear and convincing evidence to
15 the contrary.
- 16 6. A health care directive is presumed to remain in effect until the principal modifies
17 or revokes it, absent clear and convincing evidence to the contrary.
- 18 7. This chapter does not create a presumption concerning the intention of an
19 individual who has not executed a health care directive and does not impair or
20 supersede any right or responsibility of an individual to consent, refuse to consent,
21 or withdraw consent to health care on behalf of another in the absence of a health
22 care directive.
- 23 8. A copy of a health care directive is presumed to be a true and accurate copy of the
24 executed original, absent clear and convincing evidence to the contrary, and must
25 be given the same effect as an original.
- 26 9. Death resulting from the withholding or withdrawal of health care pursuant to a
27 health care directive in accordance with this chapter does not constitute, for any
28 purpose, a suicide or homicide.
- 29 10. The making of a health care directive under this chapter does not affect in any
30 manner the sale, procurement, or issuance of any policy of life insurance or
31 annuity, nor does it affect, impair, or modify the terms of an existing policy of life

1 insurance or annuity. A policy of life insurance or annuity is not legally impaired or
2 invalidated in any manner by the withholding or withdrawal of health care from an
3 insured principal, notwithstanding any term to the contrary.

4 11. A person may not prohibit or require the execution of a health care directive as a
5 condition for being insured for, or receiving, health care services.

6 12. This chapter does not affect the right of a patient to make decisions regarding use
7 of health care, so long as the patient is able to do so, or impair or supersede any
8 right or responsibility that a person has to effect the provision, withholding, or
9 withdrawal or health care.

10 13. Health care directives prepared under this chapter which direct the withholding of
11 health care do not apply to emergency treatment performed in a prehospital
12 situation.

13 **SECTION 16. AMENDMENT.** Section 23-06.5-15 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23-06.5-15. Validity of previously executed durable powers of attorney or other**
16 **directives.** A health care directive executed before the effective date of this Act, which
17 complies with the law in effect at the time it was executed, including former chapter 23-06.4,
18 must be given effect pursuant to this chapter. This chapter does not affect the validity or
19 enforceability of a durable ~~powers~~ power of attorney pertaining to for health care executed
20 before ~~July 17, 1994~~ the effective date of this Act.

21 **SECTION 17. AMENDMENT.** Section 23-06.5-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **23-06.5-16. Use of statutory form.** The statutory health care directive form of durable
24 power of attorney described in section 23-06.5-17 may be used and is ~~the preferred~~ an optional
25 form, but not a required form, by which a person may execute a ~~durable power of attorney for~~
26 health care directive pursuant to this chapter. ~~It is known as "the statutory form of durable~~
27 ~~power of attorney for health care".~~ Another form may be used if it complies with this chapter.

28 **SECTION 18. AMENDMENT.** Section 23-06.5-17 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **23-06.5-17. Statutory Optional health care directive form of durable power of**
2 **attorney.** The statutory form of durable power of attorney is as follows following is an optional
3 form of a health care directive and is not a required form:

4 ~~STATUTORY FORM DURABLE POWER OF ATTORNEY FOR~~
5 ~~—HEALTH CARE WARNING TO PERSON~~
6 ~~—EXECUTING THIS DOCUMENT~~

7 ~~This is an important legal document that is authorized by the general laws of this state.~~
8 ~~Before executing this document, you should know these important facts:~~

9 ~~You must be at least eighteen years of age for this document to be legally valid and~~
10 ~~binding.~~

11 ~~This document gives the person you designate as your agent (the attorney in fact) the~~
12 ~~power to make health care decisions for you. Your agent must act consistently with your~~
13 ~~desires as stated in this document or otherwise made known.~~

14 ~~Except as you otherwise specify in this document, this document gives your agent the~~
15 ~~power to consent to your doctor not giving treatment or stopping treatment necessary to keep~~
16 ~~you alive.~~

17 ~~Notwithstanding this document, you have the right to make medical and other health~~
18 ~~care decisions for yourself so long as you can give informed consent with respect to the~~
19 ~~particular decision.~~

20 ~~This document gives your agent authority to request, consent to, refuse to consent to,~~
21 ~~or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or~~
22 ~~treat a physical or mental condition if you are unable to do so yourself. This power is subject to~~
23 ~~any statement of your desires and any limitation that you include in this document. You may~~
24 ~~state in this document any types of treatment that you do not desire. In addition, a court can~~
25 ~~take away the power of your agent to make health care decisions for you if your agent~~
26 ~~authorizes anything that is illegal; acts contrary to your known desires; or where your desires~~
27 ~~are not known, does anything that is clearly contrary to your best interest.~~

28 ~~Unless you specify a specific period, this power will exist until you revoke it. Your~~
29 ~~agent's power and authority ceases upon your death.~~

30 ~~You have the right to revoke the authority of your agent by notifying your agent or your~~
31 ~~treating doctor, hospital, or other health care provider orally or in writing of the revocation.~~

1 ~~Your agent has the right to examine your medical records and to consent to their~~
2 ~~disclosure unless you limit this right in this document.~~

3 ~~This document revokes any prior durable power of attorney for health care.~~

4 ~~You should carefully read and follow the witnessing procedure described at the end of~~
5 ~~this form. This document will not be valid unless you comply with the witnessing procedure.~~

6 ~~If there is anything in this document that you do not understand, you should ask a~~
7 ~~lawyer to explain it to you.~~

8 ~~Your agent may need this document immediately in case of an emergency that requires~~
9 ~~a decision concerning your health care. Either keep this document where it is immediately~~
10 ~~available to your agent and alternate agents, if any, or give each of them an executed copy of~~
11 ~~this document. You should give your doctor an executed copy of this document.~~

12 ~~1. DESIGNATION OF HEALTH CARE AGENT. I, _____~~
13 ~~_____~~

14 ~~(insert your name and address)~~

15 ~~do hereby designate and appoint: _____~~
16 ~~_____~~

17 ~~(insert name, address, and telephone number of one individual only as your agent~~
18 ~~to make health care decisions for you. None of the following may be designated~~
19 ~~as your agent: your treating health care provider, a nonrelative employee of your~~
20 ~~treating health care provider, an operator of a long term care facility, or a~~
21 ~~nonrelative employee of an operator of a long term care facility) as my attorney in~~
22 ~~fact (agent) to make health care decisions for me as authorized in this document.~~
23 ~~For the purposes of this document, "health care decision" means consent, refusal~~
24 ~~of consent, or withdrawal of consent to any care, treatment, service, or procedure~~
25 ~~to maintain, diagnose, or treat an individual's physical or mental condition.~~

26 ~~2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By~~
27 ~~this document I intend to create a durable power of attorney for health care.~~

28 ~~3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations~~
29 ~~in this document, I hereby grant to my agent full power and authority to make~~
30 ~~health care decisions for me to the same extent that I could make such decisions~~
31 ~~for myself if I had the capacity to do so. In exercising this authority, my agent shall~~

1 ~~make health care decisions that are consistent with my desires as stated in this~~
2 ~~document or otherwise made known to my agent, including my desires concerning~~
3 ~~obtaining or refusing or withdrawing life prolonging care, treatment, services, and~~
4 ~~procedures. (If you want to limit the authority of your agent to make health care~~
5 ~~decisions for you, you can state the limitations in paragraph 4 below. You can~~
6 ~~indicate your desires by including a statement of your desires in the same~~
7 ~~paragraph.)~~

8 4. ~~STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your~~
9 ~~agent must make health care decisions that are consistent with your known~~
10 ~~desires. You can, but are not required to, state your desires in the space provided~~
11 ~~below. You should consider whether you want to include a statement of your~~
12 ~~desires concerning life prolonging care, treatment, services, and procedures. You~~
13 ~~can also include a statement of your desires concerning other matters relating to~~
14 ~~your health care. You can also make your desires known to your agent by~~
15 ~~discussing your desires with your agent or by some other means. If there are any~~
16 ~~types of treatment that you do not want to be used, you should state them in the~~
17 ~~space below. If you want to limit in any other way the authority given your agent~~
18 ~~by this document, you should state the limits in the space below. If you do not~~
19 ~~state any limits, your agent will have broad powers to make health care decisions~~
20 ~~for you, except to the extent that there are limits provided by law.)~~

21 ~~In exercising the authority under this durable power of attorney for health~~
22 ~~care, my agent shall act consistently with my desires as stated below and is~~
23 ~~subject to the special provisions and limitations stated below:~~

24 a. ~~Statement of desires concerning life prolonging care, treatment, services, and~~
25 ~~procedures:~~

26 _____
27 _____
28 _____

29 b. ~~Additional statement of desires, special provisions, and limitations regarding~~
30 ~~health care decisions:~~

31 _____

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~~(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.~~

~~5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:~~

- ~~a. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records.~~
- ~~b. Execute on my behalf any releases or other documents that may be required in order to obtain this information.~~
- ~~e. Consent to the disclosure of this information.~~

~~(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 above.)~~

~~6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:~~

- ~~a. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".~~
- ~~b. Any necessary waiver or release from liability required by a hospital or physician.~~

~~7. DURATION. (Unless you specify a shorter period in the space below, this power of attorney will exist until it is revoked.)~~

~~This durable power of attorney for health care expires on~~

~~(Fill in this space ONLY if you want the authority of your agent to end on a specific date.)~~

1 8. ~~DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate~~
2 ~~any alternate agents but you may do so. Any alternate agent you designate will be~~
3 ~~able to make the same health care decisions as the agent you designated in~~
4 ~~paragraph 1, above, in the event that agent is unable or ineligible to act as your~~
5 ~~agent. If the agent you designated is your spouse, he or she becomes ineligible to~~
6 ~~act as your agent if your marriage is dissolved. Your agent may withdraw whether~~
7 ~~or not you are capable of designating another agent.)~~

8 If the person designated as my agent in paragraph 1 is not available or
9 becomes ineligible to act as my agent to make a health care decision for me or
10 loses the mental capacity to make health care decisions for me, or if I revoke that
11 person's appointment or authority to act as my agent to make health care
12 decisions for me, then I designate and appoint the following persons to serve as
13 my agent to make health care decisions for me as authorized in this document,
14 such persons to serve in the order listed below:

15 a. First

16 Alternate Agent: _____

17 _____

18 (Insert name, address, and telephone number of first alternate agent.)

19 b. Second Alternate Agent: _____

20 _____

21 (Insert name, address, and telephone number of second alternate agent.)

22 HEALTH CARE DIRECTIVE

23 I _____, understand this document allows me to do

24 ONE OR ALL of the following:

25 PART I: Name another person (called the health care agent) to make health care
26 decisions for me if I am unable to decide or speak for myself. My health care agent must make
27 health care decisions for me based on the instructions I provide in this document (Part II), if
28 any, the wishes I have made known to him or her, or my agent must act in my best interest if I
29 have not made my health care wishes known.

30 AND/OR

1 PART II: Give health care instructions to guide others making health care decisions for
2 me. If I have named a health care agent, these instructions are to be used by the agent.
3 These instructions may also be used by my health care providers, others assisting with my
4 health care and my family, in the event I cannot make decisions for myself.

5 AND/OR

6 PART III: Allows me to make an organ and tissue donation upon my death by signing a
7 document of anatomical gift.

8 PART I: APPOINTMENT OF HEALTH CARE AGENT

9 THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS
10 FOR ME IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

11 (I know I can change my agent or alternate agent at any time
12 and I know I do not have to appoint an agent or an alternate agent)

13 NOTE: If you appoint an agent, you should discuss this health care directive with your
14 agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I
15 blank and go to Part II and/or Part III.

16 When I am unable to decide or speak for myself, I trust and
17 appoint _____ to make health care decisions for me. This
18 person is called my health care agent.

19 Relationship of my health care agent to me: _____

20 Telephone number of my health care agent: _____

21 Address of my health care agent: _____

22 (OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my
23 health care agent is not reasonably available, I trust and appoint _____
24 to be my health care agent instead.

25 Relationship of my alternate health care agent to me: _____

26 Telephone number of my alternate health care agent: _____

27 Address of my alternate health care agent: _____

28 THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO

29 DO

30 IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

31 (I know I can change these choices)

1 My health care agent is automatically given the powers listed below in (A) through (D).
2 My health care agent must follow my health care instructions in this document or any other
3 instructions I have given to my agent. If I have not given health care instructions, then my
4 agent must act in my best interest.

5 Whenever I am unable to decide or speak for myself, my health care agent has the
6 power to:

7 (A) Make any health care decision for me. This includes the power to give, refuse, or
8 withdraw consent to any care, treatment, service, or procedures. This includes deciding
9 whether to stop or not start health care that is keeping me or might keep me alive and deciding
10 about mental health treatment.

11 (B) Choose my health care providers.

12 (C) Choose where I live and receive care and support when whose choices relate to
13 my health care needs.

14 (D) Review my medical records and have the same rights that I would have to give my
15 medical records to other people.

16 If I DO NOT want my health care agent to have a power listed above in (A) through (D)
17 OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

18 _____
19 _____
20 _____

21 My health care agent is NOT automatically given the powers listed below in (1) and (2).
22 If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of
23 the power; then my agent WILL HAVE that power.

24 ____ (1) To decide whether to donate any parts of my body, including organs, tissues,
25 and eyes, when I die.

26 ____ (2) To decide what will happen with my body when I die (burial, cremation).

27 If I want to say anything more about my health care agent's powers or limits on the
28 powers, I can say it here:

29 _____
30 _____
31 _____

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to decide or speak for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank).

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

1 (B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH

2 CARE

3 (I know I can change these choices or leave any of them blank)

4 Many medical treatments may be used to try to improve my medical condition or to prolong my
5 life. Examples include artificial breathing by a machine connected to a tube in the lungs,
6 artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis,
7 antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then
8 stopped if they do not help.

9 I have these views about my health care in these situations:

10 (Note: You can discuss general feelings, specific treatments, or leave any of them
11 blank).

12 If I had a reasonable chance of recovery and were temporarily unable to decide or
13 speak for myself, I would want:

14 _____
15 _____
16 _____

17 If I were dying and unable to decide or speak for myself, I would want:

18 _____
19 _____
20 _____

21 If I were permanently unconscious and unable to decide or speak for myself, I would
22 want:

23 _____
24 _____
25 _____

26 If I were completely dependent on others for my care and unable to decide or speak for
27 myself, I would want:

28 _____
29 _____
30 _____

1 In all circumstances, my doctors will try to keep me comfortable and reduce my pain.

2 This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

3 _____

4 _____

5 _____

6 There are other things that I want or do not want for my health care, if possible:

7 Who I would like to be my doctor:

8 _____

9 _____

10 _____

11 Where I would like to live to receive health care:

12 _____

13 _____

14 _____

15 Where I would like to die and other wishes I have about dying:

16 _____

17 _____

18 _____

19 My wishes about what happens to my body when I die (cremation, burial):

20 _____

21 _____

22 _____

23 Any other things:

24 _____

25 _____

26 _____

27 PART III: MAKING AN ANATOMICAL GIFT

28 I would like to be an organ donor at the time of my death. I have told my family my

29 decision and ask my family to honor my wishes. I wish to donate the following (initial one

30 statement):

31 [] Any needed organs and tissue.

1 Only the following organs and tissue: _____

2 PART IV: MAKING THE DOCUMENT LEGAL

3 9. ~~PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney~~
4 ~~for health care directive.~~

5 DATE AND SIGNATURE OF PRINCIPAL

6 (YOU MUST DATE AND SIGN THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE)

7 I sign my name to this ~~Statutory Health Care Directive~~ Form ~~Durable Power of~~
8 ~~Attorney For Health Care~~ on _____ at _____
9 (date) (city)

10 _____
11 (state)

12 _____
13 (you sign here)

14 (THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT
15 IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN
16 YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY
17 ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE
18 ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS ~~POWER OF~~
19 ~~ATTORNEY~~ HEALTH CARE DIRECTIVE.)

20 NOTARY PUBLIC OR STATEMENT OF WITNESSES

21 This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The
22 person notarizing this document may be an employee of a health care or long-term care
23 provider providing your care. At least one witness to the execution of the document must not
24 be a health care or long-term care provider providing you with direct care or an employee of the
25 health care or long-term care provider providing you with direct care. None of the following
26 may be used as a notary or witness:

- 27 1. A person you designate as your agent or alternate agent;
28 2. Your spouse;
29 3. A person related to you by blood, marriage, or adoption;
30 4. A person entitled to inherit any part of your estate upon your death; or

1 I certify that the information in (1) through (3) is true and correct.

2 _____

3 (Signature of Witness Two)

4 _____

5 (Address)

6 ~~40.~~ ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this
7 appointment and agree to serve as agent for health care decisions. I understand I
8 have a duty to act consistently with the desires of the principal as expressed in this
9 appointment. I understand that this document gives me authority over health care
10 decisions for the principal only if the principal becomes ~~incapable~~ incapacitated. I
11 understand that I must act in good faith in exercising my authority under this power
12 of attorney. I understand that the principal may revoke this power of attorney at
13 any time in any manner.

14 If I choose to withdraw during the time the principal is competent, I must notify
15 the principal of my decision. If I choose to withdraw when the principal is
16 ~~incapable of making the principal's~~ not able to make health care decisions, I must
17 notify the principal's physician.

18 _____

19 (Signature of agent/date)

20 _____

21 (Signature of alternate agent/date)

22 STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM
23 CARE FACILITY (Only necessary if person is a resident of long-term care facility and Part I is
24 completed appointing an agent.)

25 I have explained the nature and effect of this health care directive to _____

26 (name of principal) who signed this document and who is a resident of _____

27 (name and city of facility). I am (check one of the following):

28 A recognized member of the clergy.

29 An attorney licensed to practice in North Dakota.

30 A person designated by the district court for the county in which the above-named facility
31 is located.

1 A person designated by the North Dakota department of human services.

2 Dated on _____, 20____. _____ (Signature)

3 STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR

4 PERSON BEING ADMITTED TO HOSPITAL (Only necessary if person is a patient in a hospital

5 or is being admitted to a hospital and Part I is completed appointing an agent.)

6 I have explained the nature and effect of this health care directive to

7 _____ (name of principal) who signed this document and who

8 is a patient or is being admitted as a patient of _____

9 (name and city of hospital). I am (check one of the following):

10 An attorney licensed to practice in North Dakota.

11 A person designated by the hospital to explain the health care directive.

12 Dated on _____, 20____. _____

13 (Signature)

14 **SECTION 19. AMENDMENT.** Section 23-06.5-18 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **23-06.5-18. Penalties.**

17 1. A person who, without authorization of the principal, willfully alters or forges a

18 ~~power of attorney~~ health care directive or willfully conceals or destroys a

19 revocation with the intent and effect of causing a withholding or withdrawal of

20 life-sustaining procedures which hastens the death of the principal is guilty of a

21 class C felony.

22 2. A person who, without authorization of the principal, willfully alters, forges,

23 conceals, or destroys a ~~power of attorney~~ health care directive or willfully alters or

24 forges a revocation of a ~~power of attorney~~ health care directive is guilty of a class

25 A misdemeanor.

26 3. The penalties provided in this section do not preclude application of any other

27 penalties provided by law.

28 **SECTION 20. REPEAL.** Chapter 23-06.4 of the North Dakota Century Code is

29 repealed.