

**2023 SENATE HUMAN SERVICES**

**SB 2125**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Lincoln Room, State Capitol

SB 2125  
1/10/2023

Relating to health care directive acceptance of appointment as agent.
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9:30 AM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston** were present. **Senator Hogan** was absent.

**Discussion Topics:**

- Sanford procedures
- Medical lifesaving advanced directives
- Signed health advanced directives
- Notarized advanced directives

9:31 AM **Senator Matheran District 11** serves on the **Appropriations Committee** introduced SB 2125 testimony in favor #12740

9:32 AM **Susan Drenth Attorney, Chair, Elder Law, Section State Bar Association of ND** clarified advanced directives online testimony in favor #12631

9:42 AM **Christopher Dodson, Executive and General Counsel ND Catholic Conference** provided information regarding health care directives testimony neutral #12744, #12745, #12746

**Senator K. Roers** moves a **DO PASS**.  
**Senator Cleary** seconded.

<b>Senators</b>	<b>Vote</b>
Senator Judy Lee	X
Senator Sean Cleary	X
Senator David A. Clemens	X
Senator Kathy Hogan	X
Senator Kristin Roers	X
Senator Kent Weston	X

Roll Call Vote: 5-0-1

**Senator Hogan** was absent on the morning of January 10; the vote was held open. Senator Hogan voted yes on SB 2125 on the afternoon of January 10, 2023.

Motion passes. Final Roll Call Vote: 6-0-0

**Senator K. Roers** will carry SB 2125.

**Additional written testimony:**

**Nancy E. Joyner, President, Honoring Choices North Dakota** in favor #12634

9:59 AM **Madam Chair Lee** closed the hearing.

*Patricia Lahr, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2125: Human Services Committee (Sen. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2125 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**2023 HOUSE HUMAN SERVICES**

**SB 2125**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Pioneer Room, State Capitol

SB 2125  
3/7/2023

Relating to health care directive acceptance of appointment as agent.
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Chairman Weisz called the meeting to order at 2:13 PM.

Chairman Robin Weisz, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. Vice Chairman Matthew Ruby not present.

**Discussion Topics:**

- Guardianship services
- Principle-agent relationship

Sen. Mathern introduced SB 2125 with supportive testimony (#26442)(#26443).

Christopher Dodson, with the North Dakota Catholic Conference, spoke in favor.

Chairman Weisz adjourned the meeting at 2:26 PM.

*Phillip Jacobs, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2125  
3/7/2023

Relating to health care directive acceptance of appointment as agent.

Chairman Weisz called the meeting to order at 4:27 PM.

Chairman Robin Weisz, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich present. Vice Chairman Matthew Ruby not present.

### Discussion Topics:

- Committee work

Chairman Weisz called for a discussion on SB 2125.

Rep. Porter moved a do pass on SB 2125.

Seconded by Rep. Frelich.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	AB
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	N
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	N
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	N
Representative Karen M. Rohr	AB

Motion carries 9-3-2.

Carried by Rep. Frelich.

Chairman Weisz adjourned the meeting at 2:26 PM.

*Phillip Jacobs, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2125: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). SB 2125 was placed on the Fourteenth order on the calendar.



**TESTIMONY**

**SB 2125**

**Testimony of Susan E. Johnson-Drenth, J.D.<sup>1</sup>, CELA<sup>2</sup>**  
**Before the Senate Human Services Committee**  
**On SB 2125**

Chairperson and members of the committee, my name is Susan Johnson-Drenth, an attorney with JD Legal Planning in Fargo, North Dakota. I am the only Certified Elder Law Attorney in North Dakota. Prior to practicing law, I worked as a Registered Nurse for ten (10) years in various intensive care units, with my last employment as a Registered Nurse in the cardiac intensive care unit at MeritCare Hospital in Fargo. I give you my background information to help you understand my passion for empowering individuals with the knowledge and ability to create a proper Health Care Directive and to have the terms of the Health Care Directive honored by their treating providers and health care institutions.

In a Health Care Directive, an individual names an agent(s) and alternate agents to make health care decisions upon the inability or unwillingness of the individual to communicate their own decisions. Additionally, a Health Care Directive allows an individual to state their wishes regarding important end-of-life decisions.

Once the Health Care Directive is properly signed by the principal, a copy of it should be provided to the medical institution for placement in an individual's medical chart. Recently, however, a medical institution, namely Sanford in Fargo, is refusing to accept Health Care Directives validly signed by the principal unless **all** agents (primary and contingent) have previously signed their acceptances on the Health Care Directive.

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<sup>1</sup> Licensed to practice law in North Dakota and Minnesota

<sup>2</sup> Certified Elder Law Attorney by the National Elder Law Foundation

Currently, North Dakota Century Code Section 23-06.5-06 states that in order for a Health Care Directive validly signed by the principal to even be effective, the agent(s) **must** accept their appointments in writing.

In the twenty-five (25) years that I have practiced estate planning in North Dakota, it is most common that there will be more than one (1) health care agent named. For example, a principal with four (4) children may name each of them as first through fourth alternate agents. These four (4) children likely live in different locations, making it cumbersome, if not impossible, to obtain the written acceptances of all four (4) children as agents before the principal needs to timely provide the Health Care Directive to their medical institution.

Waiting until all acceptances are signed in writing by all the agents before a medical institution may accept a Health Care Directive causes unnecessary delay in the administration of health care for an incapacitated principal. This unnecessary delay can be alleviated by removing the statutory requirement that, in order for a Health Care Directive to be effective, all agents must accept their appointments in writing. Other states, including Minnesota, do not have a statutory requirement that a health care agent must sign a written acceptance.

Interestingly, an individual named as attorney-in-fact in a Durable Power of Attorney does not need to sign a written acceptance under North Dakota Century Code Chapter 30.1-30. Therefore, it is illogical that a written acceptance is required by a medical agent in a Health Care Directive, but not by a financial agent (aka attorney-in-fact) in a Durable Power of Attorney.

Why would North Dakota want to cause a potential delay in the administration of life saving medical decisions, just because the agent failed to sign the back of the Health Care Directive form?

For those reasons, I strongly urge a DO PASS recommendation for SB 2125.

I am available for any questions the committee may have. Thank you.

Testimony of Nancy Joyner, President, Honoring Choices® North Dakota  
Before the Senate Human Services Committee  
For SB 2125

Chairperson and Members of the Committee,

My name is Nancy Joyner. I am a Palliative Care Clinical Nurse Specialist and have been president of Honoring Choices® North Dakota for the greater part of seven years.

The vision of Honoring Choices® North Dakota is that the health care choices that a person makes becomes the health care the person receives. Our goal is to assist communities to develop a successful advanced care planning process. To do so, it is important to provide seamless and ease in advanced care planning conversations and processes, which includes completion of health care directives. It has become increasingly difficult to get health care directives completed. The extra step of getting the health care agent to sign the document often creates yet another roadblock. I strongly urge a DO PASS recommendation for SB 2125 in removing the requirement for the signature of the health care agent. Thank you for your time and consideration.

Nancy Joyner, MS, CNS-BC, APRN, ACHPN®



January 10, 2023

North Dakota Senate Human Services Committee

Madame Chairman Lee and Committee Members,

My name is Tim Mathern and am here to introduce SB 2125. I serve on the Senate Appropriations Committee where we make recommendations on funding guardianship services. Many guardians are involved in developing health care directives. I helped start the corporate guardianship program many years ago at Catholic Family Service, now Catholic Charities of North Dakota.

Susan Drenth, an attorney who does legal guardianship work, contacted me this fall to address a problem with the execution of health care documents. I contacted other guardianship agencies in North Dakota and upon their approval, I introduced this bill. This bill simplifies the health care directive acceptance issue following the appointment of a health care agent by eliminating a return affirmation before the directive takes effect. It tracks what is done in other states.

I trust that others who know the details better than I will explain this further. I support efforts to get services to vulnerable people as soon as possible and I think this change works in that direction.

I ask you for a Do Pass recommendation on SB2125.

Thank you.

Senator Tim Mathern

## *A Guide to Health Care Directives*

### *A Resource from the North Dakota Catholic Conference*

*Health Care Directives give instructions for future health care decisions. To assist people who wish to have a health care directive, the North Dakota Catholic Conference has prepared a Catholic Health Care Directive that meets the state's legal requirements, expresses Church teaching, and reflects the recommendations of church, health care, and community leaders. This Guide answers some basic questions about the law, Church teaching, and completing a health care directive.*

#### **What do all these terms mean?**

A “**living will**” usually means a document in which a person states *only* his or her health care wishes. A “**durable power of attorney for health care**” usually means a document in which a person appoints someone to make health care decisions on his or her behalf. “**Advance directive**” usually means a living will, a durable power of attorney for health care, or a combination of the two. “**Health care directive**” is what North Dakota state law calls any advance directive. A “**health care agent**” is what state law calls the person appointed through a health care directive to make health care decisions for another.

#### **Why would I want a health care directive?**

A health care directive can help make sure that your health care wishes are followed when you cannot speak for yourself. In addition, a health care directive can help your family and friends during what may be a difficult time.

#### **What happens if I don't have a health care directive?**

In North Dakota, if you have not appointed a health care agent and you are unable to make or communicate health care decisions, state law determines who makes health care decisions for you. The law authorizes persons in the following categories, *in the order listed*, to make decisions: your health care agent unless a court specifically authorizes a guardian to make decisions for you, your court-appointed guardian or custodian, your spouse, any of your children, your parents, your adult brothers and sisters, your grandparents, your

adult grandchildren, and an adult friend or close relative. No one in a lower category may make the decision if someone in a higher category has refused to consent.

When making a health care decision, the authorized person must determine whether you would consent to the care if you were able to do so. If the person is unable to make this determination, he or she may only consent to the proposed health care if it is in your best interests.

#### **Do I need to use a special form?**

No. North Dakota law has an *optional* health care directive form, but many other forms exist that meet the state's legal requirements. In fact, you do not have to use a pre-printed form.

Any written statement that meets these requirements is valid in North Dakota:

- States the name of the person to whom it applies;
- Includes a health care directive, the appointment of an agent, or both;
- Is signed and dated by the person to whom it applies or by another person authorized to sign on behalf of the person to whom it applies;
- Is executed by a person with the capacity to understand, make, and communicate decisions; and
- Contains verification of the required signature, either by a notary public or by qualified witnesses.

If you are Catholic, the North Dakota Catholic Conference suggests that you use the *Catholic Health Care Directive* form. If the form is not included with this document, you can get one by calling the conference at 1-888-419-1237 or by downloading it at [ndcatholic.org](http://ndcatholic.org).

**Do I need an attorney? What will this cost?**

No. It is not necessary to have an attorney provide or fill out the form. However, you should contact an attorney if you have legal questions regarding advance care planning. Health care directive forms are available at no cost from a number of sources, including the North Dakota Catholic Conference.

**Should I appoint a health care agent or just write down my wishes?**

The North Dakota Catholic Conference recommends that your health care directive include the appointment of a health care agent.

Written instructions alone are only as good as your ability to accurately predict every possible future medical condition and every future medical treatment option. This is an almost impossible task. In addition, without a health care agent, the person interpreting those instructions might be someone who does not truly know what you wanted.

By appointing a health care agent, you can make sure that someone who cares about you will apply your wishes and personal beliefs to the health care choices at hand – just as you would do. Even if you appoint a health care agent, you can still give written health care instructions to direct, guide, and even limit the actions of your agent.

**Why does the hospital always ask if I have a living will? Do I have to have one?**

Federal law requires health care providers to ask you if you have an advance directive. By habit, they often use the term “living will.” You are not required to have any advance directive and you do not have to use the form they provide.

**Who can be my health care agent?**

In North Dakota, your agent must be 18 years of age or older and must accept the appointment in writing. Talk beforehand to the person you wish to appoint. Find out if the person is willing to accept the responsibility. Tell the person about your wishes and preferences for care. Be sure the person is willing and able to follow your wishes.

**I already have an advance directive. Do I need to do a new one? What if I want a new one?**

Valid advance directives completed under the old law (before August 1, 2005) will still be honored. Validly executing a new health care directive automatically revokes any older advance directive. Inform everyone who might have a copy of that old document that it is no longer valid and that you have a new health care directive.

**On health care directive forms, who is the “principal,” “declarant,” and “agent?”**

You, the person executing a health care directive, are the “principal.” When verifying your identity before a witness or notary public, you are also the “declarant.” The person you appoint as your health care agent is the “agent.”

**Will an advance directive that I completed in another state be accepted in North Dakota?**

Yes, so long as it complies with the laws of that state and is not contrary to certain North Dakota laws, such as the law against assisted suicide.

**Will a health care directive that I completed in North Dakota be accepted in another state?**

Most states have reciprocity statutes that give recognition to advance directives completed in other states. Even if a health care directive completed in North Dakota does not meet some of the technical requirements of another state's law, the directive should still be followed since it expresses the your wishes.

**What should I do with my health care directive?**

Provide a copy of your health care directive to your doctor and any other health care providers such as your hospital, nursing facility, hospice, or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members, your priest, and your attorney, if you have one.



**What fundamental principles should guide a Catholic, and indeed any person, who is thinking about health care decisions?**

1. *Human life is a precious gift from God.* This truth should inform all health care decisions. Every person has a duty to preserve his or her life and to use it for God's glory.
2. *We have the right to direct our own care and the responsibility to act according to the principles of Catholic moral teaching.* Each person has a right to clear and accurate information about a proposed course of treatment and its consequences, so that the person can make an informed decision about whether to receive or not receive the proposed treatment.
3. *Suicide, euthanasia, and acts that intentionally and directly would cause death by deed or omission, are never morally acceptable.*
4. *Death is a beginning, not an end.* Death, being conquered by Christ, need not be resisted by any and every means and a person may refuse medical treatment that is *extraordinary*. A treatment is extraordinary when it offers little or no hope of benefit or cannot be provided without undue burden, expense, or pain.
5. *There should be a strong presumption in favor of providing a person with nutrition (food) and hydration (water), even if medically assisted.* Providing nutrition and hydration should be considered ordinary care since it serves a life-preserving purpose and the means of supplying food and water are relatively simple and - barring complications - generally without pain. Exceptional situations may exist in which this is not the case, such as when a person is no longer able to assimilate nourishment, or when death is so imminent that withholding or withdrawing food and water will not be the actual cause of death. In no case should food or water be removed with the intent to cause death.
6. *We have the right to comfort and to seek relief from pain.* Although our faith teaches that we can find meaning in suffering, no one is obligated to experience pain. A person has a right to pain relief and comfort care, even if the method or treatment *indirectly* and *unintentionally* shortens life. However, it is not right to deprive the dying person of consciousness without a serious reason.

**Is this all there is to know about making ethical health care decisions?**

No. These statements are only some basic principles. Some situations, such as pregnancy or organ donation, involve other principles. Understanding and applying these principles to specific cases can be difficult. At times, your bishop or the Pope may provide clarification on the Church's teaching and guidance for specific situations.

For additional resources and information on making ethical health care decisions, contact:

*Fargo Diocese Respect Life Office  
(701-356-7910)*

*web site: [www.fargodiocese.org](http://www.fargodiocese.org)*

*Bismarck Diocese Pastoral Center  
(701-222-3035)*

*North Dakota Catholic Conference  
(1-888-419-1237; 701-223-2519)*

*web site: [ndcatholic.org](http://ndcatholic.org)*

**How can I make sure that decisions made on my behalf are consistent with my Catholic beliefs?**

State in your health care directive your desire to have all health care decisions made in a manner consistent with Catholic teaching. The *Catholic Health Care Directive* does this.

Appoint a health care agent who shares your beliefs or, at least, sincerely intends to respect your wishes.

If your health care agent is not familiar with Catholic teaching on these matters, give your agent the name of a priest or lay leader who can provide guidance. You can include the name and contact information of that person in the health care directive. You may also want to give this information to your health care provider.

**Are Catholics morally obligated to have an advance directive?**

No. However, a health care directive, especially one that appoints a health care agent, is one way to make sure that your care and treatment is consistent with the Catholic faith and your wishes.

**Is organ donation morally acceptable? Can I include a donation in my health care directive?**

Organ donation after death is a noble and meritorious act and is to be encouraged as an expression of generous solidarity. You should, however, give explicit consent. The *Catholic Health Care Directive* includes an optional section where you can give that consent.

**My friend is not Catholic, but likes the Catholic Health Care Directive. Can she cross out the parts that would not apply to her?**

Yes, she can. However, it might be a good idea to initial the changes. She can also contact the North Dakota Catholic Conference and we will send you a version of the form that retains the ethical principles in the Catholic Health Directive, but does not contain specific references to the Catholic faith.

**How can I make sure my spiritual needs are met?**

When you enter a hospital or nursing home, state that you are a Catholic and want to have a priest or lay minister care for your spiritual needs. Also state if you want to see a particular priest. Unless you have done this, certain privacy rules may prevent the hospital or nursing home from informing a priest about your presence or allowing him to visit.

If you cannot communicate your wishes when being admitted, your health care directive and health care agent can do this for you.

Include spiritual requests in your health care directive. The *Catholic Health Care Directive*, for example, includes a request for the Sacraments of Reconciliation, Anointing, and Eucharist as viaticum, if you are terminally ill. “Viaticum” literally means “food for the journey.” Death is not the end. Rather, it is only a “passing over” from this world to the Father. In preparation for this journey, the Church offers Eucharist as viaticum, i.e., Christ’s body and blood as food for the journey.

Have more questions?

Need copies of the Catholic Health Care Directive?

Visit the conference web site at: [ndcatholic.org](http://ndcatholic.org). The site includes more questions and answers, forms to download, and places to get more information.

You can also contact the North Dakota Catholic Conference:  
701-223-2519  
Toll-free at 1-888-419-1237

[ndcatholic.org](http://ndcatholic.org)

## A Catholic Health Care Directive

### My Health Care Agent

I, \_\_\_\_\_, trust and appoint \_\_\_\_\_ as my health care agent. As my health care agent, this person can make health care decisions for me if I am unable to make and communicate health care decisions for myself. If my health care agent is not reasonably available, I trust and appoint \_\_\_\_\_ as my health care agent instead.

### My Wishes

*This is what I want my health care agent - or if I have no health care agent, whoever will make decisions regarding my care - to do if I am unable to make and communicate health care decisions for myself. Most of what I state here is general in nature since I cannot anticipate all the possible circumstances of a future illness. If I have not given specific instructions, then my agent must decide consistent with my wishes and beliefs.*

As a Catholic, I believe that God created me for eternal life in union with Him. I understand that my life is a precious gift from God and that this truth should inform all decisions about my health care. I have a duty to preserve my life and to use it for God’s glory. Suicide, euthanasia, and acts that intentionally and directly would cause my death by deed or omission, are never morally acceptable. However, I also know that death, being conquered by Christ, need not be resisted by any and every means and that I may refuse any medical treatment that is excessively burdensome or would only prolong my imminent death. Those caring for me should avoid doing anything that is contrary to the moral teaching of the Catholic Church.

- ❖ Medical treatments may be foregone or withdrawn if they do not offer a reasonable hope of benefit to me or are excessively burdensome.
- ❖ There should be a presumption in favor of providing me with nutrition and hydration, including medically assisted nutrition and hydration, if they are of benefit to me.
- ❖ In accord with the teachings of my Church, I have no moral objection to the use of medication or procedures necessary for my comfort even if they may indirectly and unintentionally shorten my life.
- ❖ If my death is imminent, I direct that there be forgone or withdrawn treatment that will only maintain a precarious and burdensome prolongation of my life, unless those responsible for my care judge at that time that there are special and significant reasons why I should continue to receive such treatment.
- ❖ If I fall terminally ill, I ask that I be told of this so that I might prepare myself for death, and I ask that efforts be made that I be attended by a Catholic priest and receive the Sacraments of Reconciliation, Anointing, and Eucharist as viaticum.

Believing none of the following directives conflict with the teachings of my Catholic faith or the directives listed above, I add the following directives: (You do not need to complete this section. If you do, you can use an extra sheet, if needed.)

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### Acceptance of Appointment by Health Care Agent

I accept this appointment and agree to serve as a health care agent. I understand I have a duty to act in good faith, consistent with the desires expressed in this document, and that this document gives me authority to make health care decisions for the principal only when he or she is unable to make and communicate his or her own decisions.

I understand that the principal may revoke this appointment at any time, in any manner. If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not competent, I must notify the principal's physician.

\_\_\_\_\_  
(Signature of agent)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature of alternate agent)

\_\_\_\_\_  
(date)

### Health Care Agent Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phones: \_\_\_\_\_

Relationship: \_\_\_\_\_

### Alternate Health Care Agent Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phones: \_\_\_\_\_

Relationship: \_\_\_\_\_

### Making an Anatomical Gift (Optional)

So long as it is consistent with Catholic moral teaching, I would like to be an organ and tissue donor at the time of my death.

I do not wish to be an organ donor.

I ask my health care agent to decide on organ donation, consistent with my beliefs.

Completion of this section is not needed to become an organ donor.

*Under North Dakota law execution of this health care directive automatically revokes any previous directives you may have.*

*If you have attached additional pages to this form, date and sign each of them at the same time you date and sign this form.*

*To be valid, this health care directive must be notarized or witnessed **when you sign**. If witnessed: At least one witness must not be a health care or long-term care provider providing you with direct care or an employee of that provider.*

### **None of the following may be a notary or witness:**

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

**Your Signature** (The person making this health care directive) [***This section must be completed.***]

I sign this Health Care Directive on \_\_\_\_\_ (date) at \_\_\_\_\_ (city),  
\_\_\_\_\_ (state).

\_\_\_\_\_  
(you sign here)

**Option 1: To be Completed by a Notary Public**

In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

\_\_\_\_\_  
(Signature of Notary Public) My commission expires \_\_\_\_\_, 20\_\_\_\_.

**Option 2: To be Completed by Two Witnesses**

Witness One:

(1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [  ].

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

\_\_\_\_\_  
(Signature of Witness One) \_\_\_\_\_  
(Address)

Witness Two:

(1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [  ].

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

\_\_\_\_\_  
(Signature of Witness Two) \_\_\_\_\_  
(Address)

## ***My Health Care Directive***

### **My Health Care Agent**

I, \_\_\_\_\_, trust and appoint \_\_\_\_\_  
\_\_\_\_\_ as my health care agent. As my health care agent, this person can make health care decisions for me if I am unable to make and communicate health care decisions for myself. If my health care agent is not reasonably available, I trust and appoint \_\_\_\_\_ as my health care agent instead.

### **My Wishes**

*This is what I want my health care agent - or if I have no health care agent, whoever will make decisions regarding my care - to do if I am unable to make and communicate health care decisions for myself. Most of what I state here is general in nature since I cannot anticipate all the possible circumstances of a future illness. If I have not given specific instructions, then my agent must decide consistent with my wishes and beliefs.*

I believe that God created me for eternal life in union with Him. I understand that my life is a precious gift from God and that this truth should inform all decisions about my health care. I have a duty to preserve my life and to use it for God’s glory. Suicide, euthanasia, and acts that intentionally and directly would cause my death by deed or omission, are never morally acceptable. However, I also know that death, being conquered by Christ, need not be resisted by any and every means and that I may refuse any medical treatment that is excessively burdensome or would only prolong my imminent death.

- ❖ Medical treatments may be foregone or withdrawn if they do not offer a reasonable hope of benefit to me or are excessively burdensome.
- ❖ There should be a presumption in favor of providing me with nutrition and hydration, including medically assisted nutrition and hydration, if they are of benefit to me.
- ❖ I have no moral objection to the use of medication or procedures necessary for my comfort even if they may indirectly and unintentionally shorten my life.
- ❖ If my death is imminent, I direct that there be forgone or withdrawn treatment that will only maintain a precarious and burdensome prolongation of my life, unless those responsible for my care judge at that time that there are special and significant reasons why I should continue to receive such treatment.
- ❖ If I fall terminally ill, I ask that I be told of this so that I might prepare myself for death, and I ask that efforts be made to attend to my spiritual needs in a manner consistent with my faith tradition.

Believing none of the following directives conflict with my faith or the directives listed above, I add the following directives: (You do not need to complete this section. If you do, you can use an extra sheet, if needed.)

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**Acceptance of Appointment by Health Care Agent**

I accept this appointment and agree to serve as a health care agent. I understand I have a duty to act in good faith, consistent with the desires expressed in this document, and that this document gives me authority to make health care decisions for the principal only when he or she is unable to make and communicate his or her own decisions.

I understand that the principal may revoke this appointment at any time, in any manner. If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not competent, I must notify the principal's physician.

\_\_\_\_\_  
(Signature of agent)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature of alternate agent)

\_\_\_\_\_  
(date)

**Health Care Agent Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phones: \_\_\_\_\_

Relationship: \_\_\_\_\_

**Alternate Health Care Agent Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phones: \_\_\_\_\_

Relationship: \_\_\_\_\_

**Making an Anatomical Gift (Optional)**

So long as it is consistent with my faith, I would like to be an organ and tissue donor at the time of my death.

I do not wish to be an organ donor.

I ask my health care agent to decide on organ donation, consistent with my beliefs.

Completion of this section is not needed to become an organ donor.

*Under North Dakota law execution of this health care directive automatically revokes any previous directives you may have.*

*If you have attached additional pages to this form, date and sign each of them at the same time you date and sign this form.*

*To be valid, this health care directive must be notarized or witnessed **when you sign**. If witnessed: At least one witness must not be a health care or long-term care provider providing you with direct care or an employee of that provider.*

**None of the following may be a notary or witness:**

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

**Your Signature** (The person making this health care directive) [***This section must be completed.***]

I sign this Health Care Directive on \_\_\_\_\_ (date) at \_\_\_\_\_ (city),  
\_\_\_\_\_ (state).

\_\_\_\_\_  
\_\_\_\_\_ (you sign here)

**Option 1: To be Completed by a Notary Public**

In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

\_\_\_\_\_  
(Signature of Notary Public) My commission expires \_\_\_\_\_, 20\_\_\_\_.

**Option 2: To be Completed by Two Witnesses**

Witness One:

(1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [  ].

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

\_\_\_\_\_  
(Signature of Witness One) (Address)

Witness Two:

(1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [  ].

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

\_\_\_\_\_  
(Signature of Witness Two) (Address)



**Mathern, Tim**

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**From:** Susan Johnson-Drenth <sdrenth@jdlegalplanning.com>  
**Date:** Tuesday, March 7, 2023 11:30 AM  
**To:** Mathern, Tim  
**Cc:** Susan Johnson-Drenth  
**Subject:** SB 2125 - Testimony - Susan Johnson-Drenth

In a Health Care Directive, an individual names an agent(s) and alternate agents to make health care decisions upon the inability or unwillingness of the individual to communicate their own decisions. Additionally, a Health Care Directive allows an individual to state their wishes regarding important end-of-life decisions.

Once the Health Care Directive is properly signed by the principal, a copy of it should be provided to the medical institution for placement in an individual’s medical chart. Recently, however, a medical institution, namely Sanford in Fargo, is refusing to accept Health Care Directives validly signed by the principal unless **all** agents (primary and contingent) have previously signed their acceptances on the Health Care Directive

Currently, North Dakota Century Code Section 23-06.5-06 states that in order for a Health Care Directive validly signed by the principal to even be effective, the agent(s) **must** accept their appointments in writing.

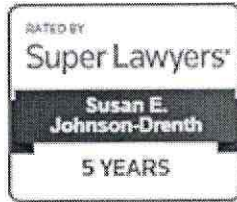
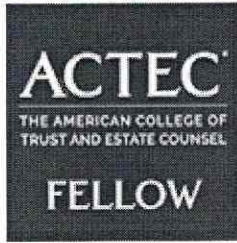
Waiting until all acceptances are signed in writing by all the agents before a medical institution may accept a Health Care Directive causes unnecessary delay in the administration of health care for an incapacitated principal. This unnecessary delay can be alleviated by removing the statutory requirement that, in order for a Health Care Directive to be effective, all agents must accept their appointments in writing. Other states, including Minnesota, do not have a statutory requirement that a health care agent must sign a written acceptance.

Interestingly, an individual named as attorney-in-fact in a Durable Power of Attorney does not need to sign a written acceptance under North Dakota Century Code Chapter 30.1-30. Therefore, it is illogical that a written acceptance is required by a medical agent in a Health Care Directive, but not by a financial agent (aka attorney-in-fact) in a Durable Power of Attorney.

Susan E. Johnson-Drenth, CELA\*  
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**Disclaimer:** Laws are constantly changing; please note the information provided in this message should be considered accurate only as of the date of this message.

March 7, 2023

ND Human Services Committee

Chairman Weisz and House Human Service Committee Members,

My name is Tim Mathern and I serve on interim committees that often raise the issue of the need for healthcare directive agents and guardianship services. I introduced SB 2125 to clarify an issue where a form is not completed.

You will note on page 9 that a major change is to delete the section of the present law regarding a form that includes the acceptance of a person named as an agent for health care decisions. This has proven to be a detriment to the services needed as we have learned that that section is not needed. Others are here to testify how that is the case.

I ask you for a Do Pass recommendation on SB2125.

Thank you.

Senator Tim Mathern