

**Chapter 32A.**

**Powers of Attorney.**

Article 1.

Statutory Short Form Power of Attorney.

**§ 32A-1. Statutory Short Form of General Power of Attorney.**

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of \_\_\_\_\_

County of \_\_\_\_\_

I \_\_\_\_\_, appoint \_\_\_\_\_

to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- (1) Real property transactions ..... \_\_\_\_\_
- (2) Personal property transactions ..... \_\_\_\_\_
- (3) Bond, share, stock, securities and commodity transactions ..... \_\_\_\_\_
- (4) Banking transactions ..... \_\_\_\_\_
- (5) Safe deposits ..... \_\_\_\_\_
- (6) Business operating transactions ..... \_\_\_\_\_
- (7) Insurance transactions ..... \_\_\_\_\_
- (8) Estate transactions ..... \_\_\_\_\_
- (9) Personal relationships and affairs ..... \_\_\_\_\_
- (10) Social security and unemployment ..... \_\_\_\_\_
- (11) Benefits from military service ..... \_\_\_\_\_
- (12) Tax matters ..... \_\_\_\_\_
- (13) Employment of agents ..... \_\_\_\_\_
- (14) Gifts to charities, and to individuals other than the attorney-in-fact ..... \_\_\_\_\_
- (15) Gifts to the named attorney-in-fact ..... \_\_\_\_\_

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates \_\_\_\_\_, \_\_\_\_\_')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated \_\_\_\_\_, \_\_\_\_\_ .

\_\_\_\_\_ (Seal)

Signature

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me, the said named \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires \_\_\_\_\_.

\_\_\_\_\_

(Signature of Notary Public)

Notary Public (Official Seal)"

(1983, c. 626, s. 1; 1985, c. 162, s. 1; c. 618, s. 1; 1995, c. 331, s. 1; c. 486, s. 2.)

**§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32A-1.**

The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

- (1) Real Property Transactions. – To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and in any way or manner deal with all or any part of any interest in real property whatsoever, that the principal owns at the time of execution or may thereafter acquire, for under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.
- (2) Personal Property Transactions. – To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens and mortgages, and hypothecate, and in any way or manner deal with all or any part of any personal property whatsoever, tangible or intangible, or any interest therein, that the principal owns at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.
- (3) Bond, Share, Stock, Securities and Commodity Transactions. – To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.
- (4) Banking Transaction. – To make, receive, sign, endorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loan or other institutions or associations for the principal.

- (5) Safe Deposits. – To have free access at any time or times to any safe deposit box or vault to which the principal might have access as lessee or owner.
- (6) Business Operating Transactions. – To conduct, engage in, and transact any and all lawful business of whatever nature or kind for the principal.
- (7) Insurance Transactions. – To exercise or perform any act, power, duty, right or obligation whatsoever in regard to any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to execution; and to procure new, different or additional contracts of insurance for the principal and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal.
- (8) Estate Transactions. – To request, ask, demand, sue for, recover, collect, receive, and hold and possess all legacies, bequests, devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.
- (9) Personal Relationships and Affairs. – To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the

principal in any church, club, society, order or other organization, or to continue contributions thereto.

In the event the attorney-in-fact named pursuant to G.S. 32A-1 makes a decision regarding the health care of the principal that is contradictory to a decision made by a health care agent appointed pursuant to Article 3 of this Chapter, the decision of the health care agent shall overrule the decision of the attorney-in-fact.

- (10) Social Security and Unemployment. – To prepare, execute and file all social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government.
- (11) Benefits from Military Service. – To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or subdivision thereof, to the principal, arising from or based upon military service and to receive, to endorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or subdivision thereof; to take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose; to prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after execution.
- (12) Tax matters. – To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute waivers of restriction on the assessment and collection of deficiency in any tax; to execute closing agreements and all other documents, instruments and

papers relating to any tax liability of any sort; to institute and carry on through counsel any proceeding in connection with determining or contesting any such tax or to recover any tax paid or to resist any claim for additional tax on any proposed assessment or levy thereof; and to enter into any agreements or stipulations for compromise or other adjustments or disposition of any tax.

- (13) Employment of Agents. – To employ agents such as legal counsel, accountants or other professional representation as may be appropriate and to grant such agents such powers of attorney or other appropriate authorization as may be required in connection with such representation or by the Internal Revenue Service or other governmental authority.
- (14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. –
- a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-228.90.
  - b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.
  - c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.
  - d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal.
- (15) Gifts to the Named Attorney-In-Fact – To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. (1983, c. 626, s. 1; 1985, c. 618, s. 2; 1987, c. 77, s. 1; 1991, c. 639, s. 2; 1995, c. 331, ss. 2-4; 1999-385, ss. 1, 2; 2001-413, s. 5.1.)

**§ 32A-3. Provisions not exclusive; reference to Chapter 32B; limitations on authority.**

(a) The provisions of this Article are not exclusive and shall not bar the use of any other or different form of power of attorney desired by the parties concerned.

(b) A power of attorney under the provisions of this Article may refer to Chapter 32B as the same is set out in Chapter 626 of the 1983 Session Laws.

(c) Notwithstanding any other provision of this Chapter, no attorney-in-fact may exercise powers described in G.S. 36C-6-602.1(a) to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan. This subsection shall not impair the authority of an attorney-in-fact to make gifts of the principal's property, as provided in Articles 2A and 2B of this Chapter. (1983, c. 626, s. 1; 1985, c. 609, s. 4; 2007-106, s. 1.1.)

**§§ 32A-4 through 32A-7. Reserved for future codification purposes.**

Article 2.

Durable Power of Attorney.

**§ 32A-8. Definition.**

A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains a statement that it is executed pursuant to the provisions of this Article or the words "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence," or "This power of attorney shall become effective after I become incapacitated or mentally incompetent," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity or mental incompetence. Unless the durable power of attorney provides otherwise, where the grant of power or authority conferred by a durable power of attorney is effective only upon the principal's subsequent incapacity or mental incompetence, any person to whom such writing is presented, in the absence of actual knowledge to the contrary, shall be entitled to rely on an affidavit, executed by the attorney-in-fact and setting forth that such condition exists, as conclusive proof of such incapacity or mental incompetence, subject to the provisions of G.S. 32A-13. (1983, c. 626, s. 1; 1991, c. 173, s. 1.)

**§ 32A-9. Registered durable power of attorney not affected by incapacity or mental incompetence.**

(a) All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of incapacity or mental incompetence of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were not incapacitated or mentally incompetent if the power of attorney has been registered under the provisions of subsection (b).

(b) No power of attorney executed pursuant to the provisions of this Article shall be valid subsequent to the principal's incapacity or mental incompetence unless it is registered in the office of the register of deeds of that county in this State designated in the power of attorney, or if no place of registration is designated, in the office of the register of deeds of the county in which the principal has his legal residence at the time of such registration or, if the principal has no legal residence in this State at the time of registration or the attorney-in-fact is uncertain as to the principal's residence in this State, in some county in the State in which the principal owns property or the county in which one or more of the attorneys-in-fact reside. A power of attorney executed pursuant to the provision of this Article shall be valid even though the time of such registration is subsequent to the incapacity or mental incompetence of the principal.

(c) Any person dealing in good faith with an attorney-in-fact acting under a power of attorney executed under this Article shall be protected to the full extent of the powers conferred upon such attorney-in-fact, and no person so dealing with such attorney-in-fact shall be responsible for the misapplication of any money or other property paid or transferred to such attorney-in-fact. (1983, c. 626, s. 1; 1987, c. 77, s. 2.)

#### **§ 32A-10. Relation of attorney-in-fact to court-appointed fiduciary.**

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the principal's person or estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not incapacitated or mentally incompetent.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. (1983, c. 626, s. 1.)

#### **§ 32A-11. File with clerk, records, inventories, accounts, fees, and commissions.**

(a) Within 30 days after registration of the power of attorney as provided in G.S. 32A-9(b), the attorney-in-fact shall file with the clerk of superior court in the county of such registration a copy of the power of attorney. Every attorney-in-fact acting under a power of attorney under this Article subsequent to the principal's incapacity or mental incompetence shall keep full and accurate records of all transactions in which he acts as agent of the principal and of all property of the principal in his hands and the disposition thereof.

(b) Any provision in the power of attorney waiving or requiring the rendering of inventories and accounts shall govern, and a power of attorney that waives the requirement to file inventories and accounts need not be filed with the clerk of superior

court. Otherwise, subsequent to the principal's incapacity or mental incompetence, the attorney-in-fact shall file in the office of the clerk of the superior court of the county in which the power of attorney is filed, inventories of the property of the principal in his hands and annual and final accounts of the receipt and disposition of property of the principal and of other transactions in behalf of the principal. The power of the clerk to enforce the filing and his duties in respect to audit and recording of such accounts shall be the same as those in respect to the accounts of administrators, but the fees and charges of the clerk shall be computed or fixed only with relation to property of the principal required to be shown in the accounts and inventories. The fees and charges of the clerk shall be paid by the attorney-in-fact out of the principal's money or other property and allowed in his accounts. If the powers of an attorney-in-fact shall terminate for any reason whatever, he, or his executors or administrators, shall have the right to have a judicial settlement of a final account by any procedure available to executors, administrators or guardians.

(c) In the event that any power of attorney executed pursuant to the provisions of this Article does not contain the amount of compensation that the attorney-in-fact is entitled to receive or the way such compensation is to be determined, and the principal should thereafter become incapacitated or mentally incompetent, then, subsequent to the principal's incapacity or mental incompetence, the attorney-in-fact shall be entitled to receive reasonable compensation as determined by the clerk of superior court after considering the factors set forth in G.S. 32-54(b). (1983, c. 626, s. 1; 2004-139, s. 3.)

### **§ 32A-12. Appointment, resignation, removal, and substitutions.**

(a) A power of attorney executed under this Article may contain any provisions, not unlawful, relating to the appointment, resignation, removal and substitution of an attorney-in-fact, and to the rights, powers, duties and responsibilities of the attorney-in-fact.

(b) If all attorneys-in-fact named in the instrument or substituted shall die, or cease to exist, or shall become incapable of acting, and all methods for substitution provided in the instrument have been exhausted, such power of attorney shall cease to be effective. Any substitution by a person authorized to make it shall be in writing signed and acknowledged by such person. Notice of every other substitution shall be in writing and acknowledged by the person substituted. No substitution or notice subsequent to the principal's subsequent incapacity or mental incompetence shall be effective until it has been recorded in the office of the register of deeds of the county in which the power of attorney has been recorded. (1983, c. 626, s. 1.)

### **§ 32A-13. Revocation.**

(a) Every power of attorney executed pursuant to the provisions of this Article and registered in an office of the register of deeds in this State as provided in G.S. 32A-9(b) shall be revoked by:

- (1) The death of the principal; or

- (2) Registration in the office of the register of deeds where the power of attorney has been registered of an instrument of revocation executed and acknowledged by the principal while he is not incapacitated or mentally incompetent, or by the registration in such office of an instrument of revocation executed by any person or corporation who is given such power of revocation in the power of attorney, or by this Article, with proof of service thereof in either case on the attorney-in-fact in the manner prescribed for service of summons in civil actions.

(b) Every power of attorney executed pursuant to the provisions of this Article which has not been registered in an office of the register of deeds in this State shall be revoked by:

- (1) The death of the principal;
- (2) Any method provided in the power of attorney;
- (3) Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal himself or by another person in his presence and by his direction, while the principal is not incapacitated or mentally incompetent; or
- (4) A subsequent written revocatory document executed and acknowledged in the manner provided herein for the execution of durable powers of attorney by the principal while not incapacitated or mentally incompetent and delivered to the attorney-in-fact in person or to his last known address by certified or registered mail, return receipt requested.

(c) As to acts undertaken in good faith reliance upon an affidavit executed by the attorney-in-fact stating that he did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation pursuant to the provisions of G.S. 32A-13(b) or by the principal's death, such affidavit is conclusive proof of the nonrevocation or nontermination of the power at that time. This section does not affect any provision in a power of attorney for its termination by the expiration of time or occurrence of an event other than an express revocation. (1983, c. 626, s. 1; 1991, c. 173, s. 2.)

**§ 32A-14. Powers of attorney executed under the provisions of G.S. 47-115.1; reference to Chapter 32B; limitations on authority.**

(a) A power of attorney executed prior to October 1, 1988, pursuant to G.S. 47-115.1 as it existed prior to October 1, 1983, shall be deemed to be a durable power of attorney as defined in G.S. 32A-8.

(b) A power of attorney under the provisions of this Article may refer to Chapter 32B as the same is set out in Chapter 626 of the 1983 Session Laws.

(c) Notwithstanding any other provision of this Chapter, no attorney-in-fact may exercise powers described in G.S. 36C-6-602.1(a) to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan. This subsection shall not impair the authority of an attorney-in-fact to make gifts of the principal's property, as provided in Articles 2A and 2B of this Chapter. (1983, c. 626, s.

1; 1985, c. 609, s. 5; 1989 (Reg. Sess., 1990), c. 992, s. 1; 2007-106, s. 1.2; 2007-484, s. 39.)

## Article 2A.

### Authority of Attorney-In-Fact to Make Gifts.

#### **§ 32A-14.1. Gifts under power of attorney.**

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-228.90.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after October 1, 1995. (1995, c. 331, s. 5; 1999-456, s. 2; 2001-413, s. 5.2.)

#### **§§ 32A-14.2 through 32A-14.9. Reserved for future codification purposes.**

## Article 2B.

### Gifts Authorized by Court Order.

**§ 32A-14.10. Gifts authorized by court order.**

An attorney-in-fact, acting under a power of attorney that does not contain the grant of power set out in G.S. 32A-14.1 and does not expressly authorize gifts of the principal's property, may initiate a special proceeding before the clerk of superior court in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney. The principal and any guardian ad litem appointed for the principal are the defendants in a proceeding pursuant to this Article. The clerk may issue an order setting forth the amounts, frequency, recipients, and proportions of any gifts of the principal's property after considering all relevant factors, including, but not limited to: (i) the size of the principal's estate; (ii) the principal's foreseeable obligations; (iii) the principal's foreseeable maintenance needs; (iv) the principal's personal history of making or joining in the making of lifetime gifts; (v) the principal's estate plan; and (vi) the tax effects of the gifts. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the clerk's order shall be submitted to the judge of the superior court and approved by the court before the order becomes effective. (1995, c. 331, s. 5.)

**§ 32A-14.11. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal is governed by Article 27A of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk stays the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken. (1995, c. 331, s. 5; 1999-216, s. 7.)

**§ 32A-14.12. Costs and fees.**

All costs and fees arising in connection with a proceeding under this Article shall be assessed the same as costs and fees are assessed in special proceedings governed by Article 33 of Chapter 1 of the General Statutes. (1995, c. 331, s. 5.)

Article 3.

Health Care Powers of Attorney.

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

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

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

(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending physician, as G.S. 90-322 shall not apply in such case. Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(d) This Article is intended and shall be construed to be consistent with the provisions of Part 3A of Article 16 of Chapter 130A of the General Statutes. In the event of a conflict between the provisions of this Article and Part 3A of Article 16 of Chapter 130A, the provisions of Part 3A of Article 16 of Chapter 130A control. (1991, c. 639, s. 1; 1993, c. 523, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2007-502, s. 1; 2008-153, s. 4.)

#### **§ 32A-16. Definitions.**

The following definitions apply in this Article:

- (1) Disposition of remains. – The decision to bury or cremate human remains, as human remains are defined in G.S. 90-210.121, and, subject to G.S. 32A-19(b), arrangements relating to burial or cremation.
- (1a) Health care. – Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section.
- (2) Health care agent. – The person appointed as a health care attorney-in-fact.
- (3) Health care power of attorney. – A written instrument that substantially meets the requirements of this Article, that is signed in the presence of two qualified witnesses, and acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal. The notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any adult care home in which the principal resides.

- (4) Life-prolonging measures. – Medical procedures or interventions which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function, including mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment. Life-prolonging measures do not include care necessary to provide comfort or to alleviate pain.
- (5) Principal. – The person making the health care power of attorney.
- (6) Qualified witness. – A witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he or she (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he or she would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor a paid employee of a health facility in which the principal is a patient, nor a paid employee of a nursing home or any adult care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.
- (7) Advance instruction for mental health treatment or advance instruction. – As defined in G.S. 122C-72(1).
- (8) Mental health treatment. – The process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" includes electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness. (1991, c. 639, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2005-351, s. 1; 2006-226, s. 32; 2007-502, s. 2.)

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

Any person having understanding and capacity to make and communicate health care decisions, who is 18 years of age or older, may make a health care power of attorney. (1991, c. 639, s. 1.)

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

Any competent person who is not engaged in providing health care to the principal for remuneration, and who is 18 years of age or older, may act as a health care agent. (1991, c. 639, s. 1.)

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

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

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains; provided this authority is limited to incurring reasonable costs related to exercising these powers, and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs.

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

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

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

(f) A health care power of attorney does not limit any authority in Article 5 of Chapter 122C of the General Statutes either to take a person into custody or to admit, retain, or treat a person in a facility. (1991, c. 639, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2007-502, s. 3.)

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

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

(b) Except for purposes of exercising authority granted by a health care power of attorney with respect to anatomical gifts, autopsy, or disposition of remains as provided in G.S. 32A-19(b), a health care power of attorney is revoked by the death of the principal. A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions. The principal may exercise this right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent health care power of attorney, or in any other manner by which the principal is able to communicate an intent to revoke. This revocation becomes effective only upon communication by the principal to each health care agent named in the revoked health care power of attorney and to the principal's attending physician or eligible psychologist.

(c) The authority of a health care agent who is the spouse of the principal shall be revoked upon the entry by a court of a decree of divorce or separation between the principal and the health care agent; provided that if the health care power of attorney designates a successor health care agent, the successor shall serve as the health care agent, and the health care power of attorney shall not be revoked. (1991, c. 639, s. 1; 1993, c. 523, s. 2; 1998-198, s. 1; 1998-217, s. 53; 2005-351, s. 2; 2006-226, s. 32.)

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

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

(b) If all health care agents named in the instrument or substituted, die or for any reason fail or refuse to act, and all methods of substitution have been exhausted, the health care power of attorney shall cease to be effective. (1991, c. 639, s. 1.)

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

(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law. The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent.

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

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

(d) A health care power of attorney may be combined with or incorporated into a general power of attorney which is executed in accordance with the requirements of this Article. (1991, c. 639, s. 1; 1998-198, s. 1; 1998-217, s. 53; 2007-502, s. 4.)

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

The provisions of Article 2 of this Chapter shall not be applicable to a health care power of attorney executed pursuant to this Article. (1991, c. 639, s. 1.)

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

(a) Any physician or other health care provider involved in the medical care of the principal may rely upon the authority of the health care agent contained in a signed and acknowledged health care power of attorney in the absence of actual knowledge of revocation of the health care power of attorney. The physician or health care provider may rely upon a copy of the health care power of attorney obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes to the same extent that the individual may rely upon the original document.

(b) All health care decisions made by a health care agent pursuant to a health care power of attorney during any period following a determination that the principal lacks understanding or capacity to make or communicate health care decisions shall have the

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

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

(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation. (1991, c. 639, s. 1; 2001-455, s. 3; 2001-513, s. 30(b); 2007-502, ss. 5(a), (b).)

§ 32A-25: Repealed by Session Laws 2007-502, s. 6(a), effective October 1, 2007.

**§ 32A-25.1. Statutory form health care power of attorney.**

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

**HEALTH CARE POWER OF ATTORNEY**

**NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.**

*EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to*

*create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.*

*This document gives the person you designate as your health care agent **broad powers** to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

*This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.*

*This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.*

*If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** two witnesses and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>*

**1. Designation of Health Care Agent.**

I, \_\_\_\_\_, being of sound mind, hereby appoint the following person(s) to serve as my health care agent(s) to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: \_\_\_\_\_ Home Telephone: \_\_\_\_\_  
Home Address: \_\_\_\_\_ Work Telephone: \_\_\_\_\_  
\_\_\_\_\_ Cellular Telephone: \_\_\_\_\_

B. Name: \_\_\_\_\_ Home Telephone: \_\_\_\_\_  
Home Address: \_\_\_\_\_ Work Telephone: \_\_\_\_\_

\_\_\_\_\_ Cellular Telephone: \_\_\_\_\_  
 C. Name: \_\_\_\_\_ Home Telephone: \_\_\_\_\_  
 Home Address: \_\_\_\_\_ Work Telephone: \_\_\_\_\_  
 \_\_\_\_\_ Cellular Telephone: \_\_\_\_\_

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

**2. Effectiveness of Appointment.**

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. \_\_\_\_\_ (*Physician*)
2. \_\_\_\_\_ (*Physician*)

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

**3. Revocation.**

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

**4. General Statement of Authority Granted.**

Subject to any restrictions set forth in Section 5 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

- A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to,

medical and hospital records, and to consent to the disclosure of this information.

- B. Employing or discharging my health care providers.
- C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.
- D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.
- E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."
- F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.
- G. Authorizing the withholding or withdrawal of life-prolonging measures.
- H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.
- I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising

any right I may have to authorize an autopsy or direct the disposition of my remains.

- J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

### 5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

- A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

\_\_\_\_\_  
*(Initial)* shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*(Initial)* shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

\_\_\_\_\_  
\_\_\_\_\_

**NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.**

- B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific

provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

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**NOTE: DO NOT initial unless you insert a limitation.**

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\_\_\_\_\_  
(Initial)

- C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)
- 
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**NOTE: DO NOT initial unless you insert a limitation.**

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\_\_\_\_\_  
(Initial)

- D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):
- 
- 

**NOTE: DO NOT initial unless you insert a limitation.**

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\_\_\_\_\_  
(Initial)

- E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition

of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

\_\_\_\_\_  
\_\_\_\_\_  
**NOTE: DO NOT initial unless you insert a limitation.**

**6. Organ Donation.**

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

\_\_\_\_\_ donate any needed organs or parts; or  
*(Initial)*

\_\_\_\_\_ donate only the following organs or parts:  
*(Initial)*

\_\_\_\_\_  
**NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.**

\_\_\_\_\_ donate my body for anatomical study if needed.  
*(Initial)*

\_\_\_\_\_ In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)  
*(Initial)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: DO NOT initial unless you insert a limitation.**

**NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.**

**7. Guardianship Provision.**

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

#### **8. Reliance of Third Parties on Health Care Agent.**

- A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.
- B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

#### **9. Miscellaneous Provisions.**

- A. **Revocation of Prior Powers of Attorney.** I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.
- B. **Jurisdiction, Severability, and Durability.** This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.
- C. **Health Care Agent Not Liable.** My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and

forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

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

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_(SEAL)

I hereby state that the principal, \_\_\_\_\_, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any adult care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: \_\_\_\_\_ Witness: \_\_\_\_\_

Date: \_\_\_\_\_ Witness: \_\_\_\_\_

\_\_\_\_\_ COUNTY, \_\_\_\_\_ STATE

Sworn to (or affirmed) and subscribed before me this day by \_\_\_\_\_  
(type/print name of signer)

\_\_\_\_\_  
(type/print name of witness)

\_\_\_\_\_  
(type/print name of witness)

Date: \_\_\_\_\_  
(Official Seal)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_, Notary Public  
Printed or typed name

My commission expires: \_\_\_\_\_

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms. (1991, c. 639, s. 1; 1993, c. 523, s. 3; 1998-198, s. 1; 1998-217, s. 53; 2005-351, s. 3; 2006-226, s. 32; 2007-502, s. 6(b); 2008-187, s. 37(a).)

**§ 32A-26. Health care power of attorney and declaration of desire for natural death.**

A health care power of attorney meeting the requirements of this Article may be combined with or incorporated into a Declaration of A Desire For A Natural Death which meets the requirements of Article 23 of Chapter 90 of the General Statutes. (1991, c. 639, s. 1.)

**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State. (2007-502, s. 7.)

Article 4.

## Consent to Health Care for Minor.

### **§ 32A-28. Purpose.**

(a) The General Assembly recognizes as a matter of public policy the fundamental right of a parent to delegate decisions relating to health care for the parent's minor child where the parent is unavailable for a period of time by reason of travel or otherwise.

(b) The purpose of this Article is to establish a nonexclusive method for a parent to authorize in the parent's absence consent to health care for the parent's minor child. This Article is not intended to be in derogation of the common law or of Article 1A of Chapter 90 of the General Statutes. (1993, c. 150, s. 1.)

### **§ 32A-29. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) "Agent" means the person authorized pursuant to this Article to consent to and authorize health care for a minor child.
- (2) "Authorization to consent to health care for minor" means a written instrument, signed by the custodial parent and acknowledged before a notary public, pursuant to which the custodial parent authorizes an agent to authorize and consent to health care for the minor child of the custodial parent, and which substantially meets the requirements of this Article.
- (3) "Custodial parent" means a parent having sole or joint legal custody of that parent's minor child.
- (4) "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat, or provide for a minor child's physical or mental or personal care and comfort, including life sustaining procedures and dental care.
- (5) "Life sustaining procedures" are those forms of care or treatment which only serve to artificially prolong life and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore, or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.
- (6) "Minor or minor child" means an individual who has not attained the age of 18 years and who has not been emancipated. (1993, c. 150.)

### **§ 32A-30. Who may make an authorization to consent to health care for minor.**

Any custodial parent having understanding and capacity to make and communicate health care decisions who is 18 years of age or older or who is emancipated may make an authorization to consent to health care for the parent's minor child. (1993, c. 150, s. 1.)

### **§ 32A-31. Extent and limitations of authority.**

(a) A custodial parent of a minor child, pursuant to an authorization to consent to health care for minor, may grant an agent full power and authority to consent to and

authorize health care for the minor child to the same extent that a custodial parent could give such consent and authorization.

(b) An authorization to consent to health care for minor may contain, and the authority of the agent designated shall be subject to, any specific limitations or restrictions as the custodial parent deems appropriate.

(c) A custodial parent may not, pursuant to an authorization to consent to health care for minor, authorize an agent to consent to the withholding or withdrawal of life sustaining procedures. (1993, c. 150, s. 1.)

### **§ 32A-32. Duration of authorization; revocation.**

(a) An authorization to consent to health care for minor shall be automatically revoked as follows:

- (1) If the authorization to consent to health care for minor specifies a date after which it shall not be effective, then the authorization shall be automatically revoked upon such date.
- (2) An authorization to consent to health care for minor shall be revoked upon the minor child's attainment of the age of 18 years or upon the minor child's emancipation.
- (3) An authorization to consent to health care for minor executed by a custodial parent shall be revoked upon the termination of such custodial parent's rights to custody of the minor child.

(b) An authorization to consent to health care for minor may be revoked at any time by the custodial parent making such authorization. The custodial parent may exercise such right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent authorization to consent to health care for the minor, or in any other manner in which the custodial parent is able to communicate the parent's intent to revoke. Such revocation shall become effective only upon communication by the custodial parent to the agent named in the revoked authorization.

(c) In the event of a disagreement regarding the health care for a minor child between two or more agents authorized pursuant to this Article to consent to and authorize health care for a minor, or between any such agent and a parent of the minor, whether or not the parent is a custodial parent, then any authorization to consent to health care for minor designating any person as an agent shall be revoked during the period of such disagreement, and the provisions of health care for the minor during such period shall be governed by the common law, the provisions of Article 1A of Chapter 90, and other provisions of law, as if no authorization to consent to health care for minor had been executed.

(d) An authorization to consent to health care for minor shall not be affected by the subsequent incapacity or mental incompetence of the custodial parent making such authorization. (1993, c. 150, s. 1.)

### **§ 32A-33. Reliance on authorization to consent to health care for minor.**

(a) Any physician, dentist, or other health care provider involved in the health care of a minor child may rely upon the authority of the agent named in a signed and acknowledged authorization to consent to health care for minor in the absence of actual knowledge that the authorization has been revoked or is otherwise invalid.

(b) Any consent to health care for a minor child given by an agent pursuant to an authorization to consent to health care for minor shall have the same effect as if the custodial parent making the authorization were present and acting on behalf of the parent's minor child. Any physician, dentist, or other health care provider relying in good faith on the authority of an agent shall be protected to the full extent of the power conferred upon the agent, and no person so relying on the authority of the agent shall be liable, by reason of reliance, for actions taken pursuant to a consent of the agent. (1993, c. 150, s. 1.)

**§ 32A-34. Statutory form authorization to consent to health care for minor.**

The use of the following form in the creation of any authorization to consent to health care for minor is lawful and, when used, it shall meet the requirements and be construed in accordance with the provisions of this Article.

"Authorization to Consent  
to Health Care for Minor."

I, \_\_\_\_\_, of \_\_\_\_\_ County, \_\_\_\_\_, am the custodial parent having legal custody of \_\_\_\_\_, a minor child, age \_\_\_\_\_, born \_\_\_\_\_, \_\_\_\_ . I authorize \_\_\_\_\_, an adult in whose care the minor child has been entrusted, and who resides at \_\_\_\_\_, to do any acts which may be necessary or proper to provide for the health care of the minor child, including, but not limited to, the power (i) to provide for such health care at any hospital or other institution, or the employing of any physician, dentist, nurse, or other person whose services may be needed for such health care, and (ii) to consent to and authorize any health care, including administration of anesthesia, X-ray examination, performance of operations, and other procedures by physicians, dentists, and other medical personnel except the withholding or withdrawal of life sustaining procedures.

[Optional: This consent shall be effective from the date of execution to and including \_\_\_\_\_, \_\_\_\_].

By signing here, I indicate that I have the understanding and capacity to communicate health care decisions and that I am fully informed as to the contents of this document and understand the full import of this grant of powers to the agent named herein.

(SEAL)  
Custodial Parent

Date

STATE OF NORTH CAROLINA

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me the named \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledges that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Notary Public

My Commission Expires:

(OFFICIAL SEAL). (1993, c. 150, s. 1; 1999-456, s. 59.)

**§ 32A-35. Reserved for future codification purposes.**

**§ 32A-36. Reserved for future codification purposes.**

**§ 32A-37. Reserved for future codification purposes.**

**§ 32A-38. Reserved for future codification purposes.**

**§ 32A-39. Reserved for future codification purposes.**

Article 5.

Enforcement of Power of Attorney.

**§ 32A-40. Reliance on power of attorney.**

(a) Unless (i) a person has actual knowledge that a writing is not a valid power of attorney, or (ii) the action taken or to be taken by a person named as attorney-in-fact in a writing that purports to confer a power of attorney is beyond the apparent power or authority of that named attorney-in-fact as granted in that writing, a person who in good faith relies on a writing that on its face is duly signed, acknowledged, and otherwise appears regular, and that purports to confer a power of attorney, durable or otherwise, shall be protected to the full extent of the powers and authority that reasonably appear to be granted to the attorney-in-fact designated in that writing, and no person so dealing in good faith with that named attorney-in-fact shall be held responsible for any breach of fiduciary duty by that attorney-in-fact, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by that attorney-in-fact. This subsection applies without regard to whether or not the person dealing with the attorney-in-fact demands or receives an affidavit under subsection (b) of this section. A person who conducts activities through employees or

other agents has actual knowledge of a fact involving a power of attorney only from the time the information was received by an employee or agent having the authority to approve the power of attorney presented.

(b) A person may, prior to acceptance of the authority of the attorney-in-fact or at any other time, request an affidavit executed by the attorney-in-fact to the effect that the attorney-in-fact did not have, at the time of the presentation to the person of the writing purporting to confer a power of attorney, actual knowledge of either (i) the revocation of the power of attorney, or (ii) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. An affidavit meeting the requirements of this subsection shall be sufficient proof to the requesting person, as of the date of the affidavit, of (i) the nonrevocation of the power of attorney, and (ii) the authenticity and validity of the power of attorney. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit shall be prepared so as to be recordable. An affidavit prepared under this subsection may also be used as an affidavit under G.S. 32A-13(c). An affidavit in the form described in subsection (d) of this section shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.

(c) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

(d) Example of Affidavit of Attorney-in-Fact.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The undersigned does hereby state and affirm the following:

- (1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by \_\_\_\_\_ ("Principal") on [date] \_\_\_\_\_, \_\_\_\_\_ (the "Power of Attorney").
- (2) The Power of Attorney is currently exercisable by the undersigned.
- (3) The undersigned has no actual knowledge of any of the following:
  - a. The Principal is deceased.
  - b. The Power of Attorney has been revoked or terminated, partially or otherwise.
  - c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed.
  - d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.
- (4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[Signature]

[Acknowledgement]

(2005-178, s. 1.)

**§ 32A-41. Penalty for unreasonable refusal to recognize power.**

(a) A person dealing with an attorney-in-fact who unreasonably refuses to accept a power of attorney shall be subject to all of the following:

- (1) Liability for reasonable attorneys' fees and costs incurred in any action or proceeding necessary to confirm the validity of a power of attorney or to implement a power of attorney.
- (2) An order of the court requiring acceptance of the valid power of attorney.
- (3) Any other remedy available under applicable law.

(b) Acceptance of a power of attorney shall mean (i) acknowledging the validity and authenticity of the document, and (ii) allowing the attorney-in-fact to conduct business in accordance with the powers that reasonably appear to be granted in the document. (2005-178, s. 1.)

**§ 32A-42. Protection for third parties.**

(a) A person is not required to honor the attorney-in-fact's authority or to conduct business with the attorney-in-fact if the person is not otherwise required to conduct business with the principal in the same circumstances.

(b) Without limiting the generality of subsection (a) of this section, nothing in this Article requires a person to do any of the following:

- (1) Engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity.
- (2) Open an account for a principal at the request of an attorney-in-fact if the principal is not currently a customer of the person.
- (3) Make a loan to the principal at the request of the attorney-in-fact.

(c) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within seven business days.

(d) A person who has reasonable cause to question the authenticity or validity of a power of attorney may refuse to accept the authority granted by that document.

(e) A person who promptly requests, and does not within a reasonable time receive, an affidavit as described in G.S. 32A-40(b), is not deemed under G.S. 32A-41 to have unreasonably refused to accept a power of attorney.

(f) The principal, the attorney-in-fact, or a person presented with a power of attorney may initiate a special proceeding in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes to request a determination of the validity of the power of attorney. If the decision in that special proceeding is that reasonable cause to refuse to accept the power of attorney existed, and that the attorney-in-fact willfully misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact,

and not the principal, is liable for reasonable attorneys' fees and costs incurred in that action.

(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of attorney, or otherwise not permitted by applicable statute or regulation.

(h) Nothing in this Article amends or modifies the rights of banks and other depository institutions to terminate any deposit account in accordance with applicable law. (2005-178, s. 1; 2006-264, s. 39(a).)

**§ 32A-43. Scope of Article.**

This Article shall apply to all or any portion of a document executed under Article 1, Article 2, or Article 2A of this Chapter. (2005-178, s. 1.)