

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2036 Session of
2003

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GOODMAN, GANNON, E. Z. TAYLOR, BROWNE, OLIVER, RUBLEY,
DeLUCA, JOSEPHS, HORSEY, SAINATO, WILT, WASHINGTON, BISHOP
AND GERGLEY, OCTOBER 8, 2003

AS REPORTED FROM COMMITTEE ON HEALTH AND HUMAN SERVICES, HOUSE
OF REPRESENTATIVES, AS AMENDED, JUNE 23, 2004

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, providing for mental
3 health care declarations and powers of attorney.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 20 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 ~~CHAPTER 58~~ <—

9 ~~MENTAL HEALTH CARE~~

10 ~~Subchapter~~

11 ~~A. General Provisions~~

12 ~~B. Mental Health Care Declarations~~

13 ~~C. Mental Health Care Powers of Attorney~~

14 ~~SUBCHAPTER A~~

GENERAL PROVISIONS

~~Sec.~~

~~5801.— Applicability.~~

~~5802.— Definitions.~~

~~5803.— Legislative findings and intent.~~

~~5804.— Compliance.~~

~~5805.— Liability.~~

~~5806.— Penalties.~~

~~5807.— Rights and responsibilities.~~

~~5808.— Combining mental health care instruments.~~

~~§ 5801.— Applicability.~~

~~(a) General rule.— This chapter applies to mental health care declarations and mental health care powers of attorney.~~

~~(b) Preservation of existing rights.— The provisions of this chapter shall not be construed to impair or supersede any existing rights or responsibilities not addressed in this chapter.~~

~~§ 5802.— Definitions.~~

~~The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:~~

~~"Attending physician."— A physician who has primary responsibility for the treatment and care of the declarant or principal.~~

~~"Declarant."— An individual who makes a declaration in accordance with this chapter.~~

~~"Declaration."— A writing made in accordance with this chapter that expresses a declarant's wishes and instructions for mental health care and mental health care directions and which may contain other specific directions.~~

~~"Mental health care." Any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutical treatment.~~

~~"Mental health care agent." An individual designated by a principal in a mental health care power of attorney.~~

~~"Mental health care power of attorney." A writing made by a principal designating an individual to make mental health care decisions for the principal.~~

~~"Mental health care provider." A person who is licensed, certified or otherwise authorized by the laws of this Commonwealth to administer or provide mental health care in the ordinary course of business or practice of a profession.~~

~~"Mental health treatment professional." A person trained and licensed in psychiatry, social work, psychology or nursing who has a graduate degree and clinical experience.~~

~~"Principal." An individual who makes a mental health care power of attorney in accordance with this chapter.~~

~~§ 5803. Legislative findings and intent.~~

~~(a) Intent. This chapter provides a means for competent adults to control their mental health care either directly through instructions written in advance or indirectly through a mental health care agent.~~

~~(b) Presumption not created. This chapter shall not be construed to create any presumption regarding the intent of an individual who has not executed a declaration or mental health care power of attorney to consent to the use or withholding of treatment.~~

~~(c) Findings in general. The General Assembly finds that all capable adults have a qualified right to control decisions~~

~~relating to their own mental health care.~~

~~§ 5804. Compliance.~~

~~(a) Duty to comply.~~

~~(1) An attending physician and mental health care provider shall comply with mental health declarations and powers of attorney.~~

~~(2) If an attending physician or other mental health care provider cannot in good conscience comply with a declaration or mental health care decision of a mental health care agent or if the policies of a mental health care provider preclude compliance with a declaration or mental health care decision of a mental health care agent, immediately upon receipt of the declaration or power of attorney, and as soon as any possibility of noncompliance becomes apparent, the attending physician or mental health care provider shall so inform the following:~~

~~(i) The declarant, if the declarant is competent.~~

~~(ii) The substitute named in the declaration, if the declarant is incompetent.~~

~~(iii) The guardian or other legal representative of the declarant, if the declarant is incompetent and a substitute is not named in the declaration.~~

~~(iv) The mental health care agent of the principal.~~

~~(b) Transfer. An attending physician or mental health care provider under subsection (a)(1) shall make every reasonable effort to assist in the transfer of the declarant or principal to another physician or mental health care provider who will comply with the declaration or mental health care decision of the mental health care agent.~~

~~§ 5805. Liability.~~

~~(a) General rule. A person who is a physician, another mental health care provider or another person who acts in good faith and consistent with this chapter may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed an act of unprofessional conduct by the State Board of Medicine or the State Board of Osteopathic Medicine as a result of any of the following:~~

~~(1) Complying with a direction or decision of an individual who the person believes in good faith has authority to act as a principal's mental health care agent so long as the direction or decision is not clearly contrary to the terms of the mental health care power of attorney.~~

~~(2) Refusing to comply with a direction or decision of an individual based on a good faith belief that the individual lacks authority to act as a principal's mental health care agent.~~

~~(3) Complying with a mental health care power of attorney under the assumption that it was valid when made and has not been amended or revoked.~~

~~(4) Disclosing mental health care information to another person based upon a good faith belief that the disclosure is authorized, permitted or required by this chapter.~~

~~(b) Same effect as if dealing with principal. Any attending physician, mental health care provider and other person who acts under subsection (a) shall be protected and released to the same extent as if dealing directly with a competent principal.~~

~~(c) Good faith of mental health care agent. A mental health care agent who acts according to the terms of a mental health care power of attorney may not be subject to civil or criminal~~

~~liability for acting in good faith for a principal or failing in
good faith to act for a principal.~~

~~§ 5806. Penalties.~~

~~(a) Offense defined. A person commits a felony of the third
degree by willfully:~~

~~(1) Concealing, canceling, altering, defacing,
obliterating or damaging a declaration without the consent of
the declarant.~~

~~(2) Concealing, canceling, altering, defacing,
obliterating or damaging a mental health care power of
attorney or any amendment or revocation thereof without the
consent of the principal.~~

~~(3) Causing a person to execute a declaration or power
of attorney under this chapter by undue influence, fraud or
duress.~~

~~(4) Falsifying or forging a mental health care power of
attorney or declaration or any amendment or revocation
thereof, the result of which is a direct change in the mental
health care provided to the principal.~~

~~(b) Removal and liability. An agent who willfully fails to
comply with a power of attorney may be removed and sued for
actual damages.~~

~~§ 5807. Rights and responsibilities.~~

~~(a) Declarants and principals. Persons who execute a
declaration or a power of attorney shall have the following
rights and responsibilities:~~

~~(1) Persons are presumed capable of making mental health
decisions unless they are adjudicated incapacitated,
involuntarily committed or found to be incapable of making
mental health decisions after examination by a psychiatrist~~

1 ~~and one of the following: another psychiatrist, psychologist,~~
2 ~~family physician, attending physician or mental health~~
3 ~~treatment professional. Whenever possible, at least one of~~
4 ~~the decision makers shall be a treating professional of the~~
5 ~~declarant or principal.~~

6 ~~(2) Persons shall be required to notify their mental~~
7 ~~health care provider of the existence of any declaration or~~
8 ~~power of attorney.~~

9 ~~(3) Periodically review their declarations or powers of~~
10 ~~attorney.~~

11 ~~(4) Give notice of amendment and revocation to~~
12 ~~providers, agents and guardians, if any.~~

13 ~~(b) Providers. Mental health treatment providers shall have~~
14 ~~the following rights and responsibilities:~~

15 ~~(1) Inquire as to the existence of declarations or~~
16 ~~powers of attorney for persons in their care.~~

17 ~~(2) Inform persons who are being discharged from~~
18 ~~treatment about the availability of mental health~~
19 ~~declarations and powers of attorney as part of discharge~~
20 ~~planning.~~

21 ~~(3) Not discriminate against persons based on whether~~
22 ~~they have or on the contents of mental health declarations or~~
23 ~~powers of attorney.~~

24 ~~(4) Not require declarations or powers of attorney as~~
25 ~~conditions of treatment.~~

26 ~~§ 5808. Combining mental health care instruments.~~

27 ~~(a) General rule. A declaration and mental health care~~
28 ~~power of attorney may be combined into one mental health care~~
29 ~~document.~~

30 ~~(b) Form. A combined declaration and mental health care~~

~~power of attorney may be in the following form or any other
written form which contains the information required under
Subchapters B (relating to mental health care declarations) and
C (relating to mental health care powers of attorney):~~

~~Combined Mental Health Care Declaration
and Power of Attorney Form~~

~~Part I.—Introduction.~~

~~I, _____, being of sound mind, willfully and
voluntarily make this declaration and power of attorney
regarding my mental health care.~~

~~I understand that mental health care includes any care,
treatment, service or procedure to maintain, diagnose, treat
or provide for mental health, including any medication
program and therapeutic treatment. Mental health care does
not include electroconvulsive therapy, laboratory trials or
research, or commitment to a mental health facility unless
specifically provided for in this document. Mental health
care does not include psychosurgery or termination of
parental rights.~~

~~I understand that my incapacity will be determined by
examination by a psychiatrist and one of the following:
another psychiatrist, psychologist, family physician,
attending physician or mental health treatment professional.
Whenever possible, one of the decision makers will be one of
my treating professionals.~~

~~Part II.—Mental Health Care Declaration.~~

~~A.—When this declaration becomes effective.~~

~~This declaration becomes effective at the following
designated time:~~

~~() When I am deemed incapable of making mental health care~~

1 ~~decisions.~~

2 ~~() When the following condition is met:~~

3 ~~(List condition)~~

4 ~~B. Treatment preferences.~~

5 ~~1. Choice of treatment facility.~~

6 ~~() In the event that I require commitment to a psychiatric~~
7 ~~treatment facility, I would prefer to be admitted to the~~
8 ~~following facility:~~

9 ~~(Insert name and address of facility)~~

10 ~~() In the event that I require commitment to a psychiatric~~
11 ~~treatment facility, I do not wish to be committed to the~~
12 ~~following facility:~~

13 ~~(Insert name and address of facility)~~

14 ~~I understand that my physician may have to place me in a~~
15 ~~facility that is not my preference.~~

16 ~~2. Preferences regarding medications for psychiatric~~
17 ~~treatment.~~

18 ~~() I do not consent to the use of any medications.~~

19 ~~() I consent to the medications that my treating physician~~
20 ~~recommends with the following exception or limitation:~~

21 ~~(List medication and reason for exception or limitation)~~

22 ~~The exception or limitation applies to generic, brand name~~
23 ~~and trade name equivalents.~~

24 ~~() I have designated an agent under the power of attorney~~
25 ~~portion of this document to make decisions related to~~
26 ~~medication.~~

27 ~~3. Preferences regarding electroconvulsive therapy~~
28 ~~(ECT).~~

29 ~~() I do not consent to the administration of~~
30 ~~electroconvulsive therapy.~~

~~() I consent to the administration of electroconvulsive therapy.~~

~~() I have designated an agent under the power of attorney portion of this document to make decisions related to electroconvulsive therapy.~~

~~4. Preferences for experimental studies or drug trials.~~

~~() I do not consent to participation in experimental studies.~~

~~() I consent to participation in experimental studies if my treating physician believes that the potential benefits to me outweigh the possible risks to me.~~

~~() I have designated an agent under the power of attorney portion of this document to make decisions related to experimental studies.~~

~~() I do not consent to participation in any drug trials.~~

~~() I consent to participation in drug trials if my treating physician believes that the potential benefits to me outweigh the possible risks to me.~~

~~() I have designated an agent under the power of attorney portion of this document to make decisions related to drug trials.~~

~~5. Additional instructions or information.~~

~~Examples of other instructions or information that may be included:~~

~~Activities that help or worsen symptoms.~~

~~Type of intervention preferred in the event of a crisis.~~

~~Mental and physical health history.~~

~~Dietary requirements.~~

~~Religious preferences.~~

~~Temporary custody of children.~~

~~Family notification.~~

~~Visitors that you do or do not want to have.~~

~~Limitations on the release or disclosure of~~

~~mental health records.~~

~~Instructions related to preferences if you are~~

~~pregnant.~~

~~Other matters of importance.~~

~~C. Revocation.~~

~~This declaration may be revoked in whole or in part in the following manner:~~

~~() At any time, either orally or in writing, as long as I have not been found to be incapable of making mental health decisions.~~

~~My revocation will be effective upon communication to my attending physician or other mental health care provider, either by me or a witness to my revocation. If I choose to revoke a particular instruction contained in this declaration in the manner specified, I understand that the other instructions contained in this declaration will remain effective until:~~

~~(1) I revoke this declaration in its entirety;~~

~~(2) I make a new combined mental health care declaration and power of attorney; or~~

~~(3) until the date I have specified as the termination date.~~

~~() This declaration will remain effective until the time specified for termination.~~

~~D. Termination.~~

~~I understand that I may specify a date upon which this~~

~~declaration will automatically terminate.~~

~~() This declaration will automatically terminate upon the date specified, unless I am deemed incapable of making mental health care decisions at the time that this declaration would expire.~~

~~(Specify date)~~

~~() This declaration will continue until I revoke it in its entirety or I make a new mental health care declaration or mental health care power of attorney.~~

~~E. Preference as to a court appointed guardian.~~

~~I understand that I may nominate a guardian of my person for consideration by the court if incapacity proceedings are commenced under 20 Pa.C.S. § 5511. I understand that the court will appoint a guardian in accordance with my most recent nomination except for good cause or disqualification. In the event a court decides to appoint a guardian, I desire the following person to be appointed:~~

~~(Insert name, address, telephone number of the designated person)~~

~~() The appointment of a guardian of my person will not give the guardian the power to revoke, suspend or terminate this declaration.~~

~~() Upon appointment of a guardian, I authorize the guardian to revoke, suspend or terminate this declaration.~~

~~Part III. Mental Health Care Power of Attorney.~~

~~I, _____, being of sound mind, authorize my designated health care agent to make certain decisions on my behalf regarding my mental health care. If I have not expressed a choice in this document or in the accompanying declaration, I authorize my agent to make the decision that~~

~~my agent determines is the decision I would make if I were
competent to do so.~~

~~A. Designation of agent.~~

~~I hereby designate and appoint the following person as my
agent to make mental health care decisions for me as
authorized in this document. This authorization applies only
to mental health decisions that are not addressed in the
accompanying signed declaration.~~

~~(Insert name of designated person)~~

~~Signed:~~

~~(My name, address, telephone number)~~

~~(Witnesses signatures)~~

~~(Insert names, addresses, telephone numbers of witnesses)~~

~~Agent's acceptance:~~

~~I hereby accept designation as mental health care agent for
(Insert name of declarant)~~

~~Agent's signature:~~

~~(Insert name, address, telephone number of designated person)~~

~~B. Designation of alternative agent.~~

~~In the event that my first agent is unavailable or unable to
serve as my mental health care agent, I hereby designate and
appoint the following individual as my alternative mental
health care agent to make mental health care decisions for me
as authorized in this document:~~

~~(Insert name of designated person)~~

~~Signed:~~

~~(My name, address, telephone number)~~

~~(Witnesses signatures)~~

~~(Insert names, addresses, telephone numbers of witnesses)~~

~~Alternative agent's acceptance:~~

~~I hereby accept designation as alternative mental health care agent for (Insert name of declarant)~~

~~Alternative agent's signature:~~

~~(Insert name, address, telephone number of alternative agent)~~

~~C. When this power of attorney become effective.~~

~~This power of attorney will become effective at the following designated time:~~

~~() When I am deemed incapable of making mental health care decisions.~~

~~() When the following condition is met:~~

~~(List condition)~~

~~D. Authority granted to my mental health care agent.~~

~~I hereby grant to my agent full power and authority to make mental health care decisions for me consistent with the instructions and limitations set forth in this document. If I have not expressed a choice in this power of attorney, or in the accompanying declaration, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.~~

~~(1) Voluntary commitment.~~

~~My agent () does () does not have the power to consent to having me admitted to a psychiatric treatment facility.~~

~~(2) Preferences regarding medications for psychiatric treatment.~~

~~() My agent is not authorized to consent to the use of any medications.~~

~~() My agent is authorized to consent to the use of any medications after consultation with my treating psychiatrist and any other persons my agent considers appropriate.~~

~~(3) Preferences regarding electroconvulsive therapy~~

~~(ECT).~~

~~() My agent is not authorized to consent to the
administration of electroconvulsive therapy.~~

~~() My agent is authorized to consent to the administration
of electroconvulsive therapy.~~

~~(4) Preferences for experimental studies or drug trials.~~

~~() My agent is not authorized to consent to my participation
in experimental studies.~~

~~() My agent is authorized to consent to my participation in
experimental studies if, after consultation with my treating
physician and any other individuals my agent deems
appropriate, my agent believes that the potential benefits to
me outweigh the possible risks to me.~~

~~() My agent is not authorized to consent to my participation
in drug trials.~~

~~() My agent is authorized to consent to my participation in
drug trials if, after consultation with my treating physician
and any other individuals my agent deems appropriate, my
agent believes that the potential benefits to me outweigh the
possible risks to me.~~

~~E. Revocation.~~

~~This power of attorney may be revoked in whole or in part in
the following manner:~~

~~() At any time, either orally or in writing, as long as I
have not been found to be incapable of making mental health
decisions.~~

~~My revocation will be effective upon communication to my
attending physician or other mental health care provider,
either by me or a witness to my revocation. If I choose to
revoke a particular instruction contained in this power of~~

~~attorney in the manner specified, I understand that the other instructions contained in this power of attorney will remain effective until:~~

~~(1) I revoke this power of attorney in its entirety;~~

~~(2) I make a new combined mental health care declaration and power of attorney; or~~

~~(3) until the date that I have specified as the termination date.~~

~~() This power of attorney will remain effective until the time specified for termination.~~

~~F. Termination.~~

~~I also understand that I may specify a date upon which this power of attorney will automatically terminate.~~

~~() This power of attorney will automatically terminate upon the date specified unless I am deemed incapable of making mental health care decisions at the time that the power of attorney would expire.~~

~~(Specify date)~~

~~() This power of attorney will continue until I revoke it in its entirety or until I make a new combined mental health care declaration and power of attorney.~~

~~I am making this combined mental health care declaration and power of attorney on the (insert day) day of (insert month), (insert year).~~

~~My signature:~~

~~(My name, address, telephone number)~~

~~Witnesses signatures:~~

~~(Names, addresses, telephone numbers of witnesses).~~

~~If the principal making this combined mental health care declaration and power of attorney is unable to sign this~~

~~document, another individual may sign on behalf of and at the
direction of the principal.~~

~~Signature of person signing on my behalf:~~

~~Signature~~

~~(Name, address, telephone number)~~

~~SUBCHAPTER B~~

~~MENTAL HEALTH CARE DECLARATIONS~~

~~Sec.~~

~~5821. Short title of subchapter.~~

~~5822. Execution.~~

~~5823. Form.~~

~~5824. Operation.~~

~~5825. Revocation.~~

~~5826. Amendment.~~

~~§ 5821. Short title of subchapter.~~

~~This subchapter shall be known and may be cited as the
Advance Directive for Mental Health Care Act.~~

~~§ 5822. Execution.~~

~~(a) Who may make. An individual who is at least 18 years of
age and has not been deemed incapacitated pursuant to section
5511 (relating to petition and hearing; independent evaluation)
or severely mentally disabled pursuant to section 301 of the act
of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health
Procedures Act, may make a declaration governing the initiation,
continuation, withholding or withdrawal of mental health
treatment.~~

~~(b) Requirements. A declaration must be:~~

~~(1) Dated and signed by the declarant by signature or
mark or by another individual on behalf of and at the
direction of the declarant.~~

~~(2) Witnessed by two individuals, each of whom must be at least 18 years of age.~~

~~(c) Witnesses.~~

~~(1) An individual who signs a declaration on behalf of and at the direction of a declarant may not witness the declaration.~~

~~(2) A mental health care provider and its agent may not sign a declaration on behalf of and at the direction of a declarant if the mental health care provider or agent provides mental health care services to the declarant.~~

~~§ 5823. Form.~~

~~A declaration may be in the following form or any other written form that expresses the wishes of a declarant regarding the initiation, continuation or refusal of mental health treatment and may include other specific directions, including, but not limited to, designation of another individual to make mental health treatment decisions for the declarant if the declarant is incapable of making mental health decisions:~~

~~Mental Health Care Declaration.~~

~~I, _____, being of sound mind, willfully and voluntarily make this declaration regarding my mental health care.~~

~~I understand that mental health care includes any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutic treatment. Mental health care does not include electroconvulsive therapy, laboratory trials or research, or commitment to a mental health facility unless specifically provided for in this document. Mental health care does not include psychosurgery or termination of~~

~~parental rights.~~

~~I understand that my incapacity will be determined by
examination by a psychiatrist and one of the following:
another psychiatrist, psychologist, family physician,
attending physician or mental health treatment professional.
Whenever possible, one of the decision makers will be one of
my treating professionals.~~

~~A. When this declaration becomes effective.~~

~~This declaration becomes effective at the following
designated time:~~

~~() When I am deemed incapable of making mental health care
decisions.~~

~~() When the following condition is met:~~

~~(List condition)~~

~~B. Treatment preferences.~~

~~1. Choice of treatment facility.~~

~~() In the event that I require commitment to a psychiatric
treatment facility, I would prefer to be admitted to the
following facility:~~

~~(Insert name and address of facility)~~

~~() In the event that I require commitment to a psychiatric
treatment facility, I do not wish to be committed to the
following facility:~~

~~(Insert name and address of facility)~~

~~I understand that my physician may have to place me in a
facility that is not my preference.~~

~~2. Preferences regarding medications for psychiatric
treatment.~~

~~() I do not consent to the use of any medications.~~

~~() I consent to the medications that my treating physician~~

~~recommends with the following exception or limitation:~~

~~(List medication and reason for exception or limitation)~~

~~This exception or limitation applies to generic, brand name
and trade name equivalents.~~

~~3. Preferences regarding electroconvulsive therapy
(ETC).~~

~~() I do not consent to the administration of
electroconvulsive therapy.~~

~~() I consent to the administration of electroconvulsive
therapy.~~

~~4. Preferences for experimental studies or drug trials.~~

~~() I do not consent to participation in experimental
studies.~~

~~() I consent to participation in experimental studies if my
treating physician believes that the potential benefits to me
outweigh the possible risks to me.~~

~~() I do not consent to participation in any drug trials.~~

~~() I consent to participation in drug trials if my treating
physician believes that the potential benefits to me outweigh
the possible risks to me.~~

~~5. Additional instructions or information:~~

~~Examples of other instructions or information that may be
included:~~

~~Activities that help or worsen symptoms.~~

~~Type of intervention preferred in the event of a
crisis.~~

~~Mental and physical health history.~~

~~Dietary requirements.~~

~~Religious preferences.~~

~~Temporary custody of children.~~

~~Family notification.~~

~~Visitors that you do or do not want to have.~~

~~Limitations on the release or disclosure of mental
health records.~~

~~Instructions related to preferences if you are
pregnant.~~

~~Other matters of importance.~~

~~C. Revocation.~~

~~This declaration may be revoked in whole or in part in the
following manner:~~

~~() At any time, either orally or in writing, as long as I
have not been found to be incapable of making mental health
decisions.~~

~~My revocation will be effective upon communication to my
attending physician or other mental health care provider,
either by me or a witness to my revocation. If I choose to
revoke a particular instruction contained in this declaration
in the manner specified, I understand that the other
instructions contained in this declaration will remain
effective until:~~

~~(1) I revoke this declaration in its entirety;~~

~~(2) I make a new mental health care declaration; or~~

~~(3) until the date I have specified as the termination
date.~~

~~() This declaration will remain effective until the time
specified for termination.~~

~~D. Termination.~~

~~I understand that I may specify a date upon which this
declaration will automatically terminate.~~

~~() This declaration will automatically terminate upon the~~

~~date specified unless I am deemed incapable of making mental health care decisions at the time that the declaration would expire.~~

~~(Specify date)~~

~~() This declaration will continue until I revoke it in its entirety or I make a new mental health care declaration.~~

~~E. Preference as to a court appointed guardian.~~

~~I understand that I may nominate a guardian of my person for consideration by the court if incapacity proceedings are commenced pursuant to 20 Pa.C.S. § 5511. I understand that the court will appoint a guardian in accordance with my most recent nomination except for good cause or disqualification. In the event a court decides to appoint a guardian, I desire the following person to be appointed:~~

~~(Insert name, address and telephone number of designated person)~~

~~() The appointment of a guardian of my person will not give the guardian the power to revoke, suspend or terminate this declaration.~~

~~() Upon appointment of a guardian, I authorize the guardian to revoke, suspend or terminate this declaration.~~

~~I am making this declaration on the (insert day) _____ day of (insert month), (insert year).~~

~~My signature: (My name, address, telephone number)~~

~~Witnesses' signatures: (Names, addresses, telephone numbers of witnesses)~~

~~If the principal making this declaration is unable to sign it, another individual may sign on behalf of and at the direction of the principal.~~

~~Signature of person signing on my behalf:~~

~~(Name, address and telephone number)~~

~~§ 5824. Operation.~~

~~(a) When operative. A declaration becomes operative when:~~

~~(1) A copy is provided to the attending physician.~~

~~(2) The conditions stated in the declaration are met.~~

~~(b) Compliance. When a declaration becomes operative, the attending physician and other mental health care providers shall act in accordance with its provisions or comply with the transfer provisions of section 5804 (relating to compliance).~~

~~(c) Invalidity of specific direction. If a specific direction in the declaration is held to be invalid, the invalidity shall not be construed to negate other directions in the declaration that can be effected without the invalid direction.~~

~~(d) Mental health record. A physician or other mental health care provider to whom a copy of a declaration is furnished shall make it a part of the mental record of the declarant and, if unwilling to comply with the declaration, promptly so advise the declarant.~~

~~(e) Duration. Unless a declaration states a time of termination, it shall be valid until revoked by the declarant. If a declaration for mental health treatment has been invoked and is in effect at the specified expiration date after its execution, the declaration shall remain effective until the principal is no longer incapable.~~

~~(f) Absence of declaration. If an individual does not make a declaration, a presumption does not arise regarding the intent of the individual to consent to or to refuse a mental health treatment.~~

~~§ 5825. Revocation.~~

~~(a) When declaration may be revoked. An individual shall specify in a declaration whether it may be revoked by the individual.~~

~~(1) at any time and in any manner, only if the individual has not been found to be incapable of making mental health treatment decisions; or~~

~~(2) at the time specified for termination.~~

~~(b) Effect of revocation. A revocation of a declaration shall be effective upon communication to the attending physician or other mental health care provider by the declarant or a witness to the revocation.~~

~~(c) Mental health record. An attending physician or other mental health care provider shall make revocation or a declaration part of the mental health record of the declarant.~~

~~§ 5826. Amendment.~~

~~While of sound mind, a declarant may amend a declaration by a writing executed in accordance with the provisions of section 5822 (relating to execution).~~

~~SUBCHAPTER C~~

~~MENTAL HEALTH CARE POWERS OF ATTORNEY~~

~~Sec.~~

~~5831. Short title of subchapter.~~

~~5832. Execution.~~

~~5833. Form.~~

~~5834. Operation.~~

~~5835. Appointment of mental health care agents.~~

~~5836. Authority of mental health care agent.~~

~~5837. Removal of agent.~~

~~5838. Effect of divorce.~~

~~5839. Revocation.~~

1 ~~5840.—Amendment.~~

2 ~~5841.—Relation of mental health care agent to court appointed~~
3 ~~guardian and other agents.~~

4 ~~5842.—Duties of attending physician and mental health care~~
5 ~~provider.~~

6 ~~5843.—Construction.~~

7 ~~5844.—Conflicting mental health care powers of attorney.~~

8 ~~5845.—Validity.~~

9 ~~§ 5831.—Short title of subchapter.~~

10 ~~This subchapter shall be known and may be cited as the Mental~~
11 ~~Health Care Agents Act.~~

12 ~~§ 5832.—Execution.~~

13 ~~(a)—Who may make.—An individual who is at least 18 years of~~
14 ~~age and has not been deemed incapacitated pursuant to section~~
15 ~~5511 (relating to petition and hearing; independent evaluation)~~
16 ~~or found to be severely mentally disabled pursuant to section~~
17 ~~302 of the act of July 9, 1976 (P.L.817, No.143), known as the~~
18 ~~Mental Health Procedures Act, may make a power of attorney~~
19 ~~governing the initiation, continuation, withholding or~~
20 ~~withdrawal of mental health treatment.~~

21 ~~(b)—Requirements.—A power of attorney must be:~~

22 ~~(1)—Dated and signed by the principal by signature or~~
23 ~~mark or by another individual on behalf of and at the~~
24 ~~direction of the principal.~~

25 ~~(2)—Witnessed by two individuals, each of whom must be~~
26 ~~at least 18 years of age.~~

27 ~~(c)—Witnesses.—~~

28 ~~(1)—An individual who signs a power of attorney on~~
29 ~~behalf of and at the direction of a principal may not witness~~
30 ~~the power of attorney.~~

~~(2) A mental health care provider and its agent may not sign a power of attorney on behalf of and at the direction of a principal if the mental health care provider or agent provides mental health care services to the principal.~~

~~§ 5833. Form.~~

~~(a) Requirements. A mental health care power of attorney must do the following:~~

~~(1) Identify the principal and appoint the mental health care agent.~~

~~(2) Declare that the principal authorizes the mental health care agent to make mental health care decisions on behalf of the principal.~~

~~(b) Optional provisions. A mental health care power of attorney may:~~

~~(1) Describe any limitations that the principal imposes upon the authority of the mental health care agent.~~

~~(2) Indicate the intent of the principal regarding the initiation, continuation or refusal of mental health treatment.~~

~~(3) Nominate a guardian of the person of the principal as provided in section 5841 (relating to relation of mental health care agent to court appointed guardian and other agents).~~

~~(4) Contain other provisions as the principal may specify regarding the implementation of mental health care decisions and related actions by the mental health care agent.~~

~~(c) Written form. A mental health care power of attorney may be in the following form or any other written form~~

~~identifying the principal, appointing a mental health care agent~~

~~and declaring that the principal authorizes the mental health care agent to make mental health care decisions on behalf of the principal.~~

~~Mental Health Care Power of Attorney~~

~~I, _____, being of sound mind, authorize my designated health care agent to make certain decisions on my behalf regarding my mental health care. If I have not expressed a choice in this document, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.~~

~~I understand that mental health care includes any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutic treatment. Mental health care does not include electroconvulsive therapy, laboratory trials or research, or commitment to a mental health facility unless specifically provided for in this document. Mental health care does not include psychosurgery or termination of parental rights.~~

~~I understand that my incapacity will be determined by examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, one of the decision makers shall be one of my treating professionals.~~

~~A. Designation of agent. I hereby designate and appoint the following person as my agent to make mental health care decisions for me as authorized in this document:~~

~~(Insert name of designated person)~~

~~Signed:~~

1 ~~(My name, address, telephone number)~~
2 ~~(Witnesses' signatures)~~
3 ~~(Names, addresses, telephone numbers of witnesses)~~
4 ~~Agent's acceptance:~~
5 ~~I hereby accept designation as mental health care agent for~~
6 ~~(Insert name of declarant)~~
7 ~~Agent's signature:~~
8 ~~(Insert name, address, telephone number of designated person)~~
9 ~~B. Designation of alternative agent.~~
10 ~~In the event that my first agent is unavailable or unable to~~
11 ~~serve as my mental health care agent, I hereby designate and~~
12 ~~appoint the following individual as my alternative mental~~
13 ~~health care agent to make mental health care decisions for me~~
14 ~~as authorized in this document:~~
15 ~~(Insert name of designated person)~~
16 ~~Signed:~~
17 ~~(Witnesses' signatures)~~
18 ~~(Names, addresses, telephone numbers of witnesses)~~
19 ~~Alternative agent's acceptance:~~
20 ~~I hereby accept designation as alternative mental health care~~
21 ~~agent for~~
22 ~~(Insert name of declarant)~~
23 ~~Alternative agent's signature:_____.~~
24 ~~(Insert name, address, telephone number)~~
25 ~~C. When this power of attorney becomes effective.~~
26 ~~This power of attorney will become effective at the following~~
27 ~~designated time:~~
28 ~~() When I am deemed incapable of making mental health care~~
29 ~~decisions.~~
30 ~~() When the following condition is met:~~

~~(List condition)~~

~~D. Authority granted to my mental health care agent.~~

~~I hereby grant to my agent full power and authority to make mental health care decisions for me consistent with the instructions and limitations set forth in this power of attorney. If I have not expressed a choice in this power of attorney, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.~~

~~1. Treatment preferences.~~

~~(a) Choice of treatment facility.~~

~~My agent () does () does not have the power to consent to having me admitted to a psychiatric treatment facility.~~

~~() In the event that I require commitment to a psychiatric treatment facility, I would prefer to be admitted to the following facility:~~

~~(Insert name and address of facility)~~

~~() In the event that I require commitment to a psychiatric treatment facility, I do not wish to be committed to the following facility:~~

~~(Insert name and address of facility)~~

~~I understand that my physician may have to place me in a facility that is not my preference.~~

~~(b) Preferences regarding medications for psychiatric treatment.~~

~~() My agent is not authorized to consent to the use of any medications.~~

~~() I consent to the medications that my agent agrees to after consultation with my treating physician and any other persons my agent considers appropriate.~~

~~() I consent to the medications that my agent agrees to,
with the following exception or limitation:~~

~~(List exception or limitation)~~

~~This exception or limitation applies to generic, brand name
and trade name equivalents.~~

~~(c) Preferences regarding electroconvulsive therapy
(ECT).~~

~~() My agent is not authorized to consent to the
administration of electroconvulsive therapy.~~

~~() My agent is authorized to consent to the administration
of electroconvulsive therapy.~~

~~(d) Preferences for experimental studies or drug trials.~~

~~() My agent is not authorized to consent to my
participation in experimental studies.~~

~~() My agent is authorized to consent to my participation in
experimental studies if, after consultation with my treating
physician and any other individuals my agent deems
appropriate, my agent believes that the potential benefits to
me outweigh the possible risks to me.~~

~~() My agent is not authorized to consent to my
participation in drug trials.~~

~~() My agent is authorized to consent to my participation in
drug trials if, after consultation with my treating physician
and any other individuals my agent deems appropriate, my
agent believes that the potential benefits to me outweigh the
possible risks to me.~~

~~(e) Additional information and instructions.~~

~~Examples of other information that may be included:~~

~~Activities that help or worsen symptoms.~~

~~Type of intervention preferred in the event of a~~

1 ~~crisis.~~

2 ~~Mental and physical health history.~~

3 ~~Dietary requirements.~~

4 ~~Religious preferences.~~

5 ~~Temporary custody of children.~~

6 ~~Family notification.~~

7 ~~Visitors that you do or do not want to have.~~

8 ~~Limitations on release or disclosure of mental~~
9 ~~health records.~~

10 ~~Instructions related to preferences if you are~~
11 ~~pregnant.~~

12 ~~Other matters of importance.~~

13 E.—~~Revocation.~~

14 ~~This power of attorney may be revoked in whole or in part in~~
15 ~~the following manner:~~

16 ~~() At any time, either orally or in writing, as long as I~~
17 ~~have not been found to be incapable of making mental health~~
18 ~~decisions.~~

19 ~~My revocation will be effective upon communication to my~~
20 ~~attending physician or other mental health care provider,~~
21 ~~either by me or a witness to my revocation. If I choose to~~
22 ~~revoke a particular instruction contained in this power of~~
23 ~~attorney in the manner specified, I understand that the other~~
24 ~~instructions contained in this power of attorney will remain~~
25 ~~effective until:~~

26 ~~(1) I revoke this power of attorney in its entirety;~~

27 ~~(2) I make a new mental health care power of attorney;~~

28 ~~or~~

29 ~~(3) until the date that I have specified as the~~
30 ~~termination date.~~

~~() This power of attorney will remain effective until the time specified for termination.~~

~~F. Termination.~~

~~I also understand that I may specify a date upon which this power of attorney will automatically terminate.~~

~~() This power of attorney will automatically terminate upon the date specified unless I am deemed incapable of making mental health care decisions at the time that the power of attorney would expire.~~

~~(Specify date)~~

~~() This power of attorney will continue until I revoke it in its entirety or until I make a new mental health care power of attorney.~~

~~G. Preference as to a court appointed guardian.~~

~~I understand that I may nominate a guardian of my person for consideration by the court if incapacity proceedings are commenced pursuant to 20 Pa.C.S. § 5511. I understand that the court will appoint a guardian in accordance with my most recent nomination except for good cause or disqualification. In the event a court decides to appoint a guardian, I desire the following person to be appointed:~~

~~(Insert name, address, telephone number of designated person)~~

~~() The appointment of a guardian of my person will not give the guardian the power to revoke, suspend or terminate this power of attorney.~~

~~() Upon appointment of a guardian, I authorize the guardian to revoke, suspend or terminate this power of attorney.~~

~~I am making this power of attorney on the (insert day) of (insert month), (insert year).~~

~~My signature~~

~~(My Name, address, telephone number)~~

~~Witnesses' signatures:~~

~~(Names, addresses, telephone numbers of witnesses)~~

~~If the principal making this power of attorney is unable to sign it, another individual may sign on behalf of and at the direction of the principal.~~

~~Signature of person signing on my behalf:~~

~~Signature~~

~~(Name, address telephone number)~~

~~§ 5834. Operation.~~

~~(a) When operative. A mental health care power of attorney shall become operative when:~~

~~(1) A copy is provided to the attending physician.~~

~~(2) The conditions stated in the power of attorney are met.~~

~~(b) Invalidity of specific direction. If a specific direction in a mental health care power of attorney is held to be invalid, the invalidity does not negate other directions in the mental health care power of attorney that can be effected without the invalid direction.~~

~~(c) Duration. Unless a power of attorney states a time of termination, it shall be valid until revoked by the principal. If a power of attorney for mental health treatment has been invoked and is in effect at the specified date of expiration after its execution, the power of attorney shall remain effective until the principal is no longer incapable.~~

~~(d) Court approval unnecessary. A mental health care decision made by a mental health care agent for a principal shall be effective without court approval.~~

~~§ 5835. Appointment of mental health care agents.~~

~~(a) Successor mental health care agents. A principal may appoint one or more successor agents who shall serve in the order named in the mental health care power of attorney unless the principal expressly directs to the contrary.~~

~~(b) Who may not be appointed mental health care agent. Unless related to the principal by blood, marriage or adoption, a principal may not appoint any of the following to be the mental health care agent:~~

~~(1) The principal's attending physician or other mental health care provider, or an employee of the attending physician or other mental health care provider.~~

~~(2) An owner, operator or employee of a residential facility in which the principal receives care.~~

~~§ 5836. Authority of mental health care agent.~~

~~(a) Extent of authority. Except as expressly provided otherwise in a mental health care power of attorney and subject to subsections (b) and (c), a mental health care agent may make any mental health care decision and exercise any right and power regarding the principal's care, custody and mental health care treatment that the principal could have made and exercised.~~

~~(b) Powers not granted. A mental health care power of attorney may not convey the power to relinquish parental rights or consent to psychosurgery.~~

~~(c) Powers and duties only specifically granted. Unless specifically included in a mental health care power of attorney, the agent shall not have the power to admit the principal to an institution, consent to electroconvulsive therapy or to experimental procedures or research.~~

~~(d) Mental health care decisions. After consultation with mental health care providers and after consideration of the~~

1 ~~prognosis and acceptable alternatives regarding diagnosis,~~
2 ~~treatments and side effects, a mental health care agent shall~~
3 ~~make mental health care decisions in accordance with the mental~~
4 ~~health care agent's understanding and interpretation of the~~
5 ~~instructions given by the principal at a time when the principal~~
6 ~~had the capacity to make and communicate mental health care~~
7 ~~decisions. Instructions include a declaration made by the~~
8 ~~principal and any clear written or verbal directions that cover~~
9 ~~the situation presented. In the absence of instructions, the~~
10 ~~mental health care agent shall make mental health care decisions~~
11 ~~conforming with the mental health care agent's assessment of the~~
12 ~~principal's preferences.~~

13 ~~(c) Mental health care information.—~~

14 ~~(1) Unless specifically provided otherwise in a mental~~
15 ~~health care power of attorney, a mental health care agent~~
16 ~~shall have the same rights and limitations as the principal~~
17 ~~to request, examine, copy and consent or refuse to consent to~~
18 ~~the disclosure of mental health care information.~~

19 ~~(2) Disclosure of mental health care information to a~~
20 ~~mental health care agent shall not be construed to constitute~~
21 ~~a waiver of any evidentiary privilege or right to assert~~
22 ~~confidentiality.~~

23 ~~(3) A mental health care provider that discloses mental~~
24 ~~health care information to a mental health care agent in good~~
25 ~~faith shall not be liable for the disclosure.~~

26 ~~(4) A mental health care agent may not disclose mental~~
27 ~~health care information regarding the principal except as is~~
28 ~~reasonably necessary to perform the agent's obligations to~~
29 ~~the principal or as otherwise required by law.~~

30 ~~(f) Liability of agent. A mental health care agent shall~~

~~not be personally liable for the costs of care and treatment of the principal.~~

~~§ 5837. Removal of agent.~~

~~(a) Grounds for removal. A health care agent can be removed for any of the following reasons:~~

~~(1) Death or incapacity.~~

~~(2) Noncompliance with a power of attorney.~~

~~(3) Physical assault or threats of harm.~~

~~(4) Coercion.~~

~~(5) Voluntary withdrawal by the agent.~~

~~(6) Divorce.~~

~~(b) Notice of voluntary withdrawal.~~

~~(1) A mental health care agent who voluntarily withdraws shall inform the principal.~~

~~(2) If the power of attorney is in effect, the agent shall notify providers of mental health treatment.~~

~~(c) Challenges. Third parties may challenge the authority of a mental health agent in the orphan's court division of the court of common pleas.~~

~~(d) Effect of removal. If a power of attorney provides for a substitute agent, then the substitute agent shall assume responsibility when the agent is removed. If the power of attorney does not provide for a substitute, then a mental health care provider shall follow any instructions in the power of attorney.~~

~~§ 5838. Effect of divorce.~~

~~If the spouse of a principal is designated as the principal's mental health care agent and thereafter either spouse files an action in divorce, the designation of the spouse as mental health care agent shall be revoked as of the time the action is~~

~~filed unless it clearly appears from the mental health care power of attorney that the designation was intended to continue to be effective notwithstanding the filing of an action in divorce by either spouse.~~

~~§ 5839. Revocation.~~

~~(a) When mental health care power of attorney may be revoked. An individual shall specify in the mental health care power of attorney whether it may be revoked by the principal:~~

~~(1) at any time and in any manner only if the principal has not been found to be incapable of making mental health treatment decisions; or~~

~~(2) at the time designated for termination.~~

~~(b) Effect of revocation. A revocation shall be effective upon communication to the attending physician or other mental health care provider by the principal or a witness to the revocation.~~

~~(c) Mental health record. The attending physician or other mental health care provider shall make the revocation part of the mental health record of the declarant.~~

~~(d) Reliance on mental health care power of attorney. A physician or other mental health care provider may rely on the effectiveness of a mental health care power of attorney unless notified of its revocation.~~

~~(e) Subsequent action by agent. A mental health care agent who has notice of the revocation of a mental health care power of attorney may not make or attempt to make mental health care decisions for the principal.~~

~~§ 5840. Amendment.~~

~~While of sound mind, a principal may amend a mental health care power of attorney by a writing executed in accordance with~~

~~the provisions of section 5832 (relating to execution).~~

~~§ 5841. Relation of mental health care agent to court appointed
guardian and other agents.~~

~~(a) Accountability of mental health care agent. If a
principal who has executed a mental health care power of
attorney is later adjudicated an incapacitated person, the power
of attorney shall remain in effect. The guardian shall not be
granted powers already granted in the mental health care power
of attorney.~~

~~(b) Nomination of guardian of person. In a mental health
care power of attorney, a principal may nominate the guardian of
the person for the principal for consideration by the court if
incapacity proceedings for the principal's person are thereafter
commenced. If the court determines that the appointment of a
guardian is necessary, the court shall appoint in accordance
with the principal's most recent nomination except for good
cause or disqualification.~~

~~§ 5842. Duties of attending physician and mental health care
provider.~~

~~(a) Compliance with decisions of mental health care agent.—
Subject to any limitation specified in a mental health care
power of attorney, an attending physician or mental health care
provider shall comply with a mental health care decision made by
a mental health care agent to the same extent as if the decision
had been made by the principal.~~

~~(b) Mental health record.—~~

~~(1) An attending physician or mental health care
provider who is given a mental health care power of attorney
shall arrange for the mental health care power of attorney or
a copy to be placed in the mental health record of the~~

1 ~~principal.~~

2 ~~(2) An attending physician or mental health care~~
3 ~~provider to whom an amendment or revocation of a mental~~
4 ~~health care power of attorney is communicated shall promptly~~
5 ~~enter the information in the mental health record of the~~
6 ~~principal and maintain a copy if one is furnished.~~

7 ~~(c) Record of determination. An attending physician who~~
8 ~~determines that a principal is unable to make or has regained~~
9 ~~the capacity to make mental health treatment decisions or makes~~
10 ~~a determination that affects the authority of a mental health~~
11 ~~care agent shall enter the determination in the mental health~~
12 ~~record of the principal and, if possible, promptly inform the~~
13 ~~principal and any mental health care agent of the determination.~~

14 ~~§ 5843. Construction.~~

15 ~~(a) General rule. Nothing in this subchapter shall be~~
16 ~~construed to:~~

17 ~~(1) Affect the requirements of other laws of this~~
18 ~~Commonwealth regarding consent to observation, diagnosis,~~
19 ~~treatment or hospitalization for a mental illness.~~

20 ~~(2) Authorize a mental health care agent to consent to~~
21 ~~any mental health care prohibited by the laws of this~~
22 ~~Commonwealth.~~

23 ~~(3) Affect the laws of this Commonwealth regarding any~~
24 ~~of the following:~~

25 ~~(i) The standard of care of a mental health care~~
26 ~~provider required in the administration of mental health~~
27 ~~care or the clinical decision making authority of the~~
28 ~~mental health care provider.~~

29 ~~(ii) When consent is required for mental health~~
30 ~~care.~~

1 ~~(iii) Informed consent for mental health care.~~

2 ~~(b) Disclosure.~~

3 ~~(1) The disclosure requirements of section 5836(e)~~
4 ~~(relating to authority of mental health care agent) shall~~
5 ~~supersede any provision in any other State statute or~~
6 ~~regulation that requires a principal to consent to disclosure~~
7 ~~or which otherwise conflicts with section 5836(e), including,~~
8 ~~but not limited to, the following:~~

9 ~~(i) The act of April 14, 1972 (P.L.221, No.63),~~
10 ~~known as the Pennsylvania Drug and Alcohol Abuse Control~~
11 ~~Act.~~

12 ~~(ii) Section 111 of the act of July 9, 1976~~
13 ~~(P.L.817, No.143), known as the Mental Health Procedures~~
14 ~~Act.~~

15 ~~(iii) The act of October 5, 1978 (P.L.1109, No.261),~~
16 ~~known as the Osteopathic Medical Practice Act.~~

17 ~~(iv) Section 41 of the act of December 20, 1985~~
18 ~~(P.L.457, No.112), known as the Medical Practice Act of~~
19 ~~1985.~~

20 ~~(v) The act of November 29, 1990 (P.L.585, No.148),~~
21 ~~known as the Confidentiality of HIV Related Information~~
22 ~~Act.~~

23 ~~(2) The disclosure requirements under section 5836(e)~~
24 ~~shall not apply to the extent that the disclosure would be~~
25 ~~prohibited by Federal law and implementing regulations.~~

26 ~~(c) Notice and acknowledgment requirements. The notice and~~
27 ~~acknowledgment requirements of section 5601(c) and (d) (relating~~
28 ~~to general provisions) shall not apply to a power of attorney~~
29 ~~that provides exclusively for mental health care decision~~
30 ~~making.~~

~~§ 5844. Conflicting mental health care powers of attorney.~~

~~If a provision of a mental health care power of attorney conflicts with another provision of a mental health care power of attorney or with a provision of a declaration, the provision of the instrument latest in date of execution shall prevail to the extent of the conflict.~~

~~§ 5845. Validity.~~

~~This subchapter shall not be construed to limit the validity of a mental health care power of attorney executed prior to the effective date of this subchapter. A mental health care power of attorney executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth, except to the extent that the mental health care power of attorney executed in another state or jurisdiction would allow a mental health care agent to make a mental health care decision inconsistent with the laws of this Commonwealth.~~

~~Section 2. The following acts and parts of acts are repealed insofar as they are inconsistent with this act:~~

~~The provisions of 20 Pa.C.S. Ch. 54.~~

~~The provisions of 20 Pa.C.S. § 5602(a)(8) and (9).~~

~~The provisions of 20 Pa.C.S. § 5603(h).~~

~~Section 3. (a) The repeal of the form of the declaration in 20 Pa.C.S. § 5404(b) shall not affect the validity of any declaration executed pursuant to that form before, on or after the effective date of this act.~~

~~(b) The repeal of 20 Pa.C.S. §§ 5602(a)(8) and (9) and 5603(h) shall not affect the authority of an agent operating under any power of attorney relying on those provisions, executed before the effective date of the repeal of those~~

1 ~~provisions.~~

2 ~~Section 4. This act shall take effect in 60 days.~~

3 CHAPTER 58

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4 MENTAL HEALTH CARE

5 SUBCHAPTER

6 A. GENERAL PROVISIONS

7 B. MENTAL HEALTH CARE DECLARATIONS

8 C. MENTAL HEALTH CARE POWERS OF ATTORNEY

9 SUBCHAPTER A

10 GENERAL PROVISIONS

11 SEC.

12 5801. APPLICABILITY.

13 5802. DEFINITIONS.

14 5803. LEGISLATIVE FINDINGS AND INTENT.

15 5804. COMPLIANCE.

16 5805. LIABILITY.

17 5806. PENALTIES.

18 5807. RIGHTS AND RESPONSIBILITIES.

19 5808. COMBINING MENTAL HEALTH CARE INSTRUMENTS.

20 § 5801. APPLICABILITY.

21 (A) GENERAL RULE.--THIS CHAPTER APPLIES TO MENTAL HEALTH
22 CARE DECLARATIONS AND MENTAL HEALTH CARE POWERS OF ATTORNEY.

23 (B) PRESERVATION OF EXISTING RIGHTS.--THE PROVISIONS OF THIS
24 CHAPTER SHALL NOT BE CONSTRUED TO IMPAIR OR SUPERSEDE ANY
25 EXISTING RIGHTS OR RESPONSIBILITIES NOT ADDRESSED IN THIS
26 CHAPTER.

27 § 5802. DEFINITIONS.

28 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
29 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
30 CONTEXT CLEARLY INDICATES OTHERWISE:

1 "ATTENDING PHYSICIAN." A PHYSICIAN WHO HAS PRIMARY
2 RESPONSIBILITY FOR THE TREATMENT AND CARE OF THE DECLARANT OR
3 PRINCIPAL.

4 "DECLARANT." AN INDIVIDUAL WHO MAKES A DECLARATION IN
5 ACCORDANCE WITH THIS CHAPTER.

6 "DECLARATION." A WRITING MADE IN ACCORDANCE WITH THIS
7 CHAPTER THAT EXPRESSES A DECLARANT'S WISHES AND INSTRUCTIONS FOR
8 MENTAL HEALTH CARE AND MENTAL HEALTH CARE DIRECTIONS AND WHICH
9 MAY CONTAIN OTHER SPECIFIC DIRECTIONS.

10 "MENTAL HEALTH CARE." ANY CARE, TREATMENT, SERVICE OR
11 PROCEDURE TO MAINTAIN, DIAGNOSE, TREAT OR PROVIDE FOR MENTAL
12 HEALTH, INCLUDING ANY MEDICATION PROGRAM AND THERAPEUTICAL
13 TREATMENT.

14 "MENTAL HEALTH CARE AGENT." AN INDIVIDUAL DESIGNATED BY A
15 PRINCIPAL IN A MENTAL HEALTH CARE POWER OF ATTORNEY.

16 "MENTAL HEALTH CARE POWER OF ATTORNEY." A WRITING MADE BY A
17 PRINCIPAL DESIGNATING AN INDIVIDUAL TO MAKE MENTAL HEALTH CARE
18 DECISIONS FOR THE PRINCIPAL.

19 "MENTAL HEALTH CARE PROVIDER." A PERSON WHO IS LICENSED,
20 CERTIFIED OR OTHERWISE AUTHORIZED BY THE LAWS OF THIS
21 COMMONWEALTH TO ADMINISTER OR PROVIDE MENTAL HEALTH CARE IN THE
22 ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION.

23 "MENTAL HEALTH TREATMENT PROFESSIONAL." A LICENSED PHYSICIAN
24 WHO HAS SUCCESSFULLY COMPLETED A RESIDENCY PROGRAM IN PSYCHIATRY
25 OR A PERSON TRAINED AND LICENSED IN SOCIAL WORK, PSYCHOLOGY OR
26 NURSING WHO HAS A GRADUATE DEGREE AND CLINICAL EXPERIENCE IN
27 MENTAL HEALTH.

28 "PRINCIPAL." AN INDIVIDUAL WHO MAKES A MENTAL HEALTH CARE
29 POWER OF ATTORNEY IN ACCORDANCE WITH THIS CHAPTER.

30 § 5803. LEGISLATIVE FINDINGS AND INTENT.

1 (A) INTENT.--THIS CHAPTER PROVIDES A MEANS FOR COMPETENT
2 ADULTS TO CONTROL THEIR MENTAL HEALTH CARE EITHER DIRECTLY
3 THROUGH INSTRUCTIONS WRITTEN IN ADVANCE OR INDIRECTLY THROUGH A
4 MENTAL HEALTH CARE AGENT.

5 (B) PRESUMPTION NOT CREATED.--THIS CHAPTER SHALL NOT BE
6 CONSTRUED TO CREATE ANY PRESUMPTION REGARDING THE INTENT OF AN
7 INDIVIDUAL WHO HAS NOT EXECUTED A DECLARATION OR MENTAL HEALTH
8 CARE POWER OF ATTORNEY TO CONSENT TO THE USE OR WITHHOLDING OF
9 TREATMENT.

10 (C) FINDINGS IN GENERAL.--THE GENERAL ASSEMBLY FINDS THAT
11 ALL CAPABLE ADULTS HAVE A QUALIFIED RIGHT TO CONTROL DECISIONS
12 RELATING TO THEIR OWN MENTAL HEALTH CARE.

13 § 5804. COMPLIANCE.

14 (A) DUTY TO COMPLY.--

15 (1) AN ATTENDING PHYSICIAN AND MENTAL HEALTH CARE
16 PROVIDER SHALL COMPLY WITH MENTAL HEALTH DECLARATIONS AND
17 POWERS OF ATTORNEY.

18 (2) IF AN ATTENDING PHYSICIAN OR OTHER MENTAL HEALTH
19 CARE PROVIDER CANNOT IN GOOD CONSCIENCE COMPLY WITH A
20 DECLARATION OR MENTAL HEALTH CARE DECISION OF A MENTAL HEALTH
21 CARE AGENT BECAUSE THE INSTRUCTIONS ARE CONTRARY TO ACCEPTED
22 CLINICAL PRACTICE AND MEDICAL STANDARDS OR BECAUSE TREATMENT
23 IS UNAVAILABLE OR IF THE POLICIES OF A MENTAL HEALTH CARE
24 PROVIDER PRECLUDE COMPLIANCE WITH A DECLARATION OR MENTAL
25 HEALTH CARE DECISION OF A MENTAL HEALTH CARE AGENT,
26 IMMEDIATELY UPON RECEIPT OF THE DECLARATION OR POWER OF
27 ATTORNEY, AND AS SOON AS ANY POSSIBILITY OF NONCOMPLIANCE
28 BECOMES APPARENT, THE ATTENDING PHYSICIAN OR MENTAL HEALTH
29 CARE PROVIDER SHALL SO INFORM THE FOLLOWING:

30 (I) THE DECLARANT, IF THE DECLARANT IS COMPETENT.

1 (II) THE SUBSTITUTE NAMED IN THE DECLARATION, IF THE
2 DECLARANT IS INCOMPETENT.

3 (III) THE GUARDIAN OR OTHER LEGAL REPRESENTATIVE OF
4 THE DECLARANT, IF THE DECLARANT IS INCOMPETENT AND A
5 SUBSTITUTE IS NOT NAMED IN THE DECLARATION.

6 (IV) THE MENTAL HEALTH CARE AGENT OF THE PRINCIPAL.

7 (3) THE PHYSICIAN OR MENTAL HEALTH CARE PROVIDER SHALL
8 DOCUMENT THE REASONS FOR NONCOMPLIANCE.

9 (B) TRANSFER.--AN ATTENDING PHYSICIAN OR MENTAL HEALTH CARE
10 PROVIDER UNDER SUBSECTION (A)(2) SHALL MAKE EVERY REASONABLE
11 EFFORT TO ASSIST IN THE TRANSFER OF THE DECLARANT OR PRINCIPAL
12 TO ANOTHER PHYSICIAN OR MENTAL HEALTH CARE PROVIDER WHO WILL
13 COMPLY WITH THE DECLARATION OR MENTAL HEALTH CARE DECISION OF
14 THE MENTAL HEALTH CARE AGENT.

15 § 5805. LIABILITY.

16 (A) GENERAL RULE.--A PERSON WHO IS A PHYSICIAN, ANOTHER
17 MENTAL HEALTH CARE PROVIDER OR ANOTHER PERSON WHO ACTS IN GOOD
18 FAITH AND CONSISTENT WITH THIS CHAPTER MAY NOT BE SUBJECT TO
19 CRIMINAL OR CIVIL LIABILITY, DISCIPLINE FOR UNPROFESSIONAL
20 CONDUCT OR ADMINISTRATIVE SANCTIONS AND MAY NOT BE FOUND TO HAVE
21 COMMITTED AN ACT OF UNPROFESSIONAL CONDUCT BY ANY PROFESSIONAL
22 BOARD OR ADMINISTRATIVE BODY WITH SUCH AUTHORITY AS A RESULT OF
23 ANY OF THE FOLLOWING:

24 (1) COMPLYING WITH A DIRECTION OR DECISION OF AN
25 INDIVIDUAL WHO THE PERSON BELIEVES IN GOOD FAITH HAS
26 AUTHORITY TO ACT AS A PRINCIPAL'S MENTAL HEALTH CARE AGENT SO
27 LONG AS THE DIRECTION OR DECISION IS NOT CLEARLY CONTRARY TO
28 THE TERMS OF THE MENTAL HEALTH CARE POWER OF ATTORNEY.

29 (2) REFUSING TO COMPLY WITH A DIRECTION OR DECISION OF
30 AN INDIVIDUAL BASED ON A GOOD FAITH BELIEF THAT THE

1 INDIVIDUAL LACKS AUTHORITY TO ACT AS A PRINCIPAL'S MENTAL
2 HEALTH CARE AGENT.

3 (3) COMPLYING WITH A MENTAL HEALTH CARE POWER OF
4 ATTORNEY OR DECLARATION UNDER THE ASSUMPTION THAT IT WAS
5 VALID WHEN MADE AND HAS NOT BEEN AMENDED OR REVOKED.

6 (4) DISCLOSING MENTAL HEALTH CARE INFORMATION TO ANOTHER
7 PERSON BASED UPON A GOOD FAITH BELIEF THAT THE DISCLOSURE IS
8 AUTHORIZED, PERMITTED OR REQUIRED BY THIS CHAPTER.

9 (5) REFUSING TO COMPLY WITH THE DIRECTION OR DECISION OF
10 AN INDIVIDUAL DUE TO CONFLICTS WITH A PROVIDER'S CONTRACTUAL,
11 NETWORK OR PAYMENT POLICY RESTRICTIONS.

12 (6) REFUSING TO COMPLY WITH A MENTAL HEALTH DIRECTIVE
13 WHICH VIOLATES ACCEPTED CLINICAL STANDARDS OR MEDICAL
14 STANDARDS OF CARE.

15 (7) MAKING A DETERMINATION THAT THE PATIENT LACKS
16 CAPACITY TO MAKE MENTAL HEALTH DECISIONS THAT CAUSES A MENTAL
17 HEALTH ADVANCE DIRECTIVE TO BECOME EFFECTIVE.

18 (B) SAME EFFECT AS IF DEALING WITH PRINCIPAL.--ANY ATTENDING
19 PHYSICIAN, MENTAL HEALTH CARE PROVIDER AND OTHER PERSON WHO ACTS
20 UNDER SUBSECTION (A) SHALL BE PROTECTED AND RELEASED TO THE SAME
21 EXTENT AS IF DEALING DIRECTLY WITH A COMPETENT PRINCIPAL.

22 (C) GOOD FAITH OF MENTAL HEALTH CARE AGENT.--A MENTAL HEALTH
23 CARE AGENT WHO ACTS ACCORDING TO THE TERMS OF A MENTAL HEALTH
24 CARE POWER OF ATTORNEY MAY NOT BE SUBJECT TO CIVIL OR CRIMINAL
25 LIABILITY FOR ACTING IN GOOD FAITH FOR A PRINCIPAL OR FAILING IN
26 GOOD FAITH TO ACT FOR A PRINCIPAL.

27 § 5806. PENALTIES.

28 (A) OFFENSE DEFINED.--A PERSON COMMITS A FELONY OF THE THIRD
29 DEGREE BY WILLFULLY:

30 (1) CONCEALING, CANCELING, ALTERING, DEFACING,

1 OBLITERATING OR DAMAGING A DECLARATION WITHOUT THE CONSENT OF
2 THE DECLARANT.

3 (2) CONCEALING, CANCELING, ALTERING, DEFACING,
4 OBLITERATING OR DAMAGING A MENTAL HEALTH CARE POWER OF
5 ATTORNEY OR ANY AMENDMENT OR REVOCATION THEREOF WITHOUT THE
6 CONSENT OF THE PRINCIPAL.

7 (3) CAUSING A PERSON TO EXECUTE A DECLARATION OR POWER
8 OF ATTORNEY UNDER THIS CHAPTER BY UNDUE INFLUENCE, FRAUD OR
9 DURESS.

10 (4) FALSIFYING OR FORGING A MENTAL HEALTH CARE POWER OF
11 ATTORNEY OR DECLARATION OR ANY AMENDMENT OR REVOCATION
12 THEREOF, THE RESULT OF WHICH IS A DIRECT CHANGE IN THE MENTAL
13 HEALTH CARE PROVIDED TO THE PRINCIPAL.

14 (B) REMOVAL AND LIABILITY.--AN AGENT WHO WILLFULLY FAILS TO
15 COMPLY WITH A POWER OF ATTORNEY MAY BE REMOVED AND SUED FOR
16 ACTUAL DAMAGES.

17 § 5807. RIGHTS AND RESPONSIBILITIES.

18 (A) DECLARANTS AND PRINCIPALS.--PERSONS WHO EXECUTE A
19 DECLARATION OR A POWER OF ATTORNEY SHALL HAVE THE FOLLOWING
20 RIGHTS AND RESPONSIBILITIES:

21 (1) PERSONS ARE PRESUMED CAPABLE OF MAKING MENTAL HEALTH
22 DECISIONS UNLESS THEY ARE ADJUDICATED INCAPACITATED,
23 INVOLUNTARILY COMMITTED OR FOUND TO BE INCAPABLE OF MAKING
24 MENTAL HEALTH DECISIONS AFTER EXAMINATION BY A PSYCHIATRIST
25 AND ONE OF THE FOLLOWING: ANOTHER PSYCHIATRIST, PSYCHOLOGIST,
26 FAMILY PHYSICIAN, ATTENDING PHYSICIAN OR MENTAL HEALTH
27 TREATMENT PROFESSIONAL. WHENEVER POSSIBLE, AT LEAST ONE OF
28 THE DECISION MAKERS SHALL BE A TREATING PROFESSIONAL OF THE
29 DECLARANT OR PRINCIPAL.

30 (2) PERSONS SHALL BE REQUIRED TO NOTIFY THEIR MENTAL

1 HEALTH CARE PROVIDER OF THE EXISTENCE OF ANY DECLARATION OR
2 POWER OF ATTORNEY.

3 (3) PERSONS SHALL EXECUTE OR AMEND THEIR DECLARATIONS OR
4 POWERS OF ATTORNEY EVERY TWO YEARS, HOWEVER IF A PERSON IS
5 INCAPABLE OF MAKING MENTAL HEALTH CARE DECISIONS AT THE TIME
6 THIS DOCUMENT WOULD EXPIRE, THE DOCUMENT SHALL REMAIN IN
7 EFFECT AND BE REVIEWED AT THE TIME WHEN THE PERSON REGAINS
8 CAPACITY.

9 (4) PERSONS SHALL GIVE NOTICE OF AMENDMENT AND
10 REVOCATION TO PROVIDERS, AGENTS AND GUARDIANS, IF ANY.

11 (B) PROVIDERS.--MENTAL HEALTH TREATMENT PROVIDERS SHALL HAVE
12 THE FOLLOWING RIGHTS AND RESPONSIBILITIES:

13 (1) INQUIRE AS TO THE EXISTENCE OF DECLARATIONS OR
14 POWERS OF ATTORNEY FOR PERSONS IN THEIR CARE.

15 (2) INFORM PERSONS WHO ARE BEING DISCHARGED FROM
16 TREATMENT ABOUT THE AVAILABILITY OF MENTAL HEALTH
17 DECLARATIONS AND POWERS OF ATTORNEY AS PART OF DISCHARGE
18 PLANNING.

19 (3) NOT REQUIRE DECLARATIONS OR POWERS OF ATTORNEY AS
20 CONDITIONS OF TREATMENT. MENTAL HEALTH TREATMENT PROVIDERS
21 MAY NOT CHOOSE WHETHER TO ACCEPT A PERSON FOR TREATMENT BASED
22 ON THE EXISTENCE, ABSENCE OR CONTENTS OF A MENTAL HEALTH
23 DECLARATION OR POWER OF ATTORNEY.

24 § 5808. COMBINING MENTAL HEALTH CARE INSTRUMENTS.

25 (A) GENERAL RULE.--A DECLARATION AND MENTAL HEALTH CARE
26 POWER OF ATTORNEY MAY BE COMBINED INTO ONE MENTAL HEALTH CARE
27 DOCUMENT.

28 (B) FORM.--A COMBINED DECLARATION AND MENTAL HEALTH CARE
29 POWER OF ATTORNEY MAY BE IN THE FOLLOWING FORM OR ANY OTHER
30 WRITTEN FORM WHICH CONTAINS THE INFORMATION REQUIRED UNDER

SUBCHAPTERS B (RELATING TO MENTAL HEALTH CARE DECLARATIONS) AND
C (RELATING TO MENTAL HEALTH CARE POWERS OF ATTORNEY):

COMBINED MENTAL HEALTH CARE DECLARATION

AND POWER OF ATTORNEY FORM

PART I. INTRODUCTION.

I, _____, HAVING CAPACITY TO MAKE MENTAL HEALTH
DECISIONS, WILLFULLY AND VOLUNTARILY MAKE THIS DECLARATION
AND POWER OF ATTORNEY REGARDING MY MENTAL HEALTH CARE.

I UNDERSTAND THAT MENTAL HEALTH CARE INCLUDES ANY CARE,
TREATMENT, SERVICE OR PROCEDURE TO MAINTAIN, DIAGNOSE, TREAT
OR PROVIDE FOR MENTAL HEALTH, INCLUDING ANY MEDICATION
PROGRAM AND THERAPEUTIC TREATMENT. MENTAL HEALTH CARE DOES
NOT INCLUDE ELECTROCONVULSIVE THERAPY, LABORATORY TRIALS OR
RESEARCH. MENTAL HEALTH CARE DOES NOT INCLUDE PSYCHOSURGERY
OR TERMINATION OF PARENTAL RIGHTS.

I UNDERSTAND THAT MY INCAPACITY WILL BE DETERMINED BY
EXAMINATION BY A PSYCHIATRIST AND ONE OF THE FOLLOWING:
ANOTHER PSYCHIATRIST, PSYCHOLOGIST, FAMILY PHYSICIAN,
ATTENDING PHYSICIAN OR MENTAL HEALTH TREATMENT PROFESSIONAL.
WHENEVER POSSIBLE, ONE OF THE DECISION MAKERS WILL BE ONE OF
MY TREATING PROFESSIONALS.

PART II. MENTAL HEALTH CARE DECLARATION.

A. WHEN THIS DECLARATION BECOMES EFFECTIVE.

THIS DECLARATION BECOMES EFFECTIVE AT THE FOLLOWING
DESIGNATED TIME:

() WHEN I AM DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE
DECISIONS.

() WHEN THE FOLLOWING CONDITION IS MET:

(LIST CONDITION)

B. TREATMENT PREFERENCES.

1 1. CHOICE OF TREATMENT FACILITY.
2 () IN THE EVENT THAT I REQUIRE COMMITMENT TO A PSYCHIATRIC
3 TREATMENT FACILITY, I WOULD PREFER TO BE ADMITTED TO THE
4 FOLLOWING FACILITY:

5 (ININSERT NAME AND ADDRESS OF FACILITY)

6 () IN THE EVENT THAT I REQUIRE COMMITMENT TO A PSYCHIATRIC
7 TREATMENT FACILITY, I DO NOT WISH TO BE COMMITTED TO THE
8 FOLLOWING FACILITY:

9 (ININSERT NAME AND ADDRESS OF FACILITY)

10 I UNDERSTAND THAT MY PHYSICIAN MAY HAVE TO PLACE ME IN A
11 FACILITY THAT IS NOT MY PREFERENCE.

12 2. PREFERENCES REGARDING MEDICATIONS FOR PSYCHIATRIC
13 TREATMENT.

14 () I CONSENT TO THE MEDICATIONS THAT MY TREATING PHYSICIAN
15 RECOMMENDS.

16 () I CONSENT TO THE MEDICATIONS THAT MY TREATING PHYSICIAN
17 RECOMMENDS WITH THE FOLLOWING EXCEPTION OR LIMITATION:

18 (LIST MEDICATION AND REASON FOR EXCEPTION OR LIMITATION)
19 THE EXCEPTION OR LIMITATION APPLIES TO GENERIC, BRAND NAME
20 AND TRADE NAME EQUIVALENTS. I UNDERSTAND THAT DOSAGE
21 INSTRUCTIONS ARE NOT BINDING ON MY PHYSICIAN.

22 () I DO NOT CONSENT TO THE USE OF ANY MEDICATIONS.

23 () I HAVE DESIGNATED AN AGENT UNDER THE POWER OF ATTORNEY
24 PORTION OF THIS DOCUMENT TO MAKE DECISIONS RELATED TO
25 MEDICATION.

26 3. PREFERENCES REGARDING ELECTROCONVULSIVE THERAPY
27 (ECT).

28 () I CONSENT TO THE ADMINISTRATION OF ELECTROCONVULSIVE
29 THERAPY.

30 () I DO NOT CONSENT TO THE ADMINISTRATION OF

1 ELECTROCONVULSIVE THERAPY.

2 () I HAVE DESIGNATED AN AGENT UNDER THE POWER OF ATTORNEY
3 PORTION OF THIS DOCUMENT TO MAKE DECISIONS RELATED TO
4 ELECTROCONVULSIVE THERAPY.

5 4. PREFERENCES FOR EXPERIMENTAL STUDIES OR DRUG TRIALS.

6 () I CONSENT TO PARTICIPATION IN EXPERIMENTAL STUDIES IF MY
7 TREATING PHYSICIAN BELIEVES THAT THE POTENTIAL BENEFITS TO ME
8 OUTWEIGH THE POSSIBLE RISKS TO ME.

9 () I HAVE DESIGNATED AN AGENT UNDER THE POWER OF ATTORNEY
10 PORTION OF THIS DOCUMENT TO MAKE DECISIONS RELATED TO
11 EXPERIMENTAL STUDIES.

12 () I DO NOT CONSENT TO PARTICIPATION IN EXPERIMENTAL
13 STUDIES.

14 () I CONSENT TO PARTICIPATION IN DRUG TRIALS IF MY TREATING
15 PHYSICIAN BELIEVES THAT THE POTENTIAL BENEFITS TO ME OUTWEIGH
16 THE POSSIBLE RISKS TO ME.

17 () I HAVE DESIGNATED AN AGENT UNDER THE POWER OF ATTORNEY
18 PORTION OF THIS DOCUMENT TO MAKE DECISIONS RELATED TO DRUG
19 TRIALS.

20 () I DO NOT CONSENT TO PARTICIPATION IN ANY DRUG TRIALS.

21 5. ADDITIONAL INSTRUCTIONS OR INFORMATION.

22 EXAMPLES OF OTHER INSTRUCTIONS OR INFORMATION THAT MAY BE
23 INCLUDED:

24 ACTIVITIES THAT HELP OR WORSEN SYMPTOMS.

25 TYPE OF INTERVENTION PREFERRED IN THE EVENT OF A
26 CRISIS.

27 MENTAL AND PHYSICAL HEALTH HISTORY.

28 DIETARY REQUIREMENTS.

29 RELIGIOUS PREFERENCES.

30 TEMPORARY CUSTODY OF CHILDREN.

1 FAMILY NOTIFICATION.

2 LIMITATIONS ON THE RELEASE OR DISCLOSURE OF

3 MENTAL HEALTH RECORDS.

4 INSTRUCTIONS RELATED TO PREFERENCES IF YOU ARE

5 PREGNANT.

6 OTHER MATTERS OF IMPORTANCE.

7 C. REVOCATION.

8 THIS DECLARATION MAY BE REVOKED IN WHOLE OR IN PART AT ANY
9 TIME, EITHER ORALLY OR IN WRITING, AS LONG AS I HAVE NOT BEEN
10 FOUND TO BE INCAPABLE OF MAKING MENTAL HEALTH DECISIONS.

11 MY REVOCATION WILL BE EFFECTIVE UPON COMMUNICATION TO MY
12 ATTENDING PHYSICIAN OR OTHER MENTAL HEALTH CARE PROVIDER,
13 EITHER BY ME OR A WITNESS TO MY REVOCATION, OF THE INTENT TO
14 REVOKE. IF I CHOOSE TO REVOKE A PARTICULAR INSTRUCTION
15 CONTAINED IN THIS DECLARATION IN THE MANNER SPECIFIED, I
16 UNDERSTAND THAT THE OTHER INSTRUCTIONS CONTAINED IN THIS
17 DECLARATION WILL REMAIN EFFECTIVE UNTIL:

18 (1) I REVOKE THIS DECLARATION IN ITS ENTIRETY;

19 (2) I MAKE A NEW COMBINED MENTAL HEALTH CARE DECLARATION
20 AND POWER OF ATTORNEY; OR

21 (3) TWO YEARS AFTER THE DATE THIS DOCUMENT WAS EXECUTED.

22 D. TERMINATION.

23 I UNDERSTAND THAT THIS DECLARATION WILL AUTOMATICALLY
24 TERMINATE TWO YEARS FROM THE DATE OF EXECUTION, UNLESS I AM
25 DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE DECISIONS AT
26 THE TIME THAT THIS DECLARATION WOULD EXPIRE.

27 (SPECIFY DATE)

28 E. PREFERENCE AS TO A COURT-APPOINTED GUARDIAN.

29 I UNDERSTAND THAT I MAY NOMINATE A GUARDIAN OF MY PERSON FOR
30 CONSIDERATION BY THE COURT IF INCAPACITY PROCEEDINGS ARE

1 COMMENCED UNDER 20 PA.C.S. § 5511. I UNDERSTAND THAT THE
2 COURT WILL APPOINT A GUARDIAN IN ACCORDANCE WITH MY MOST
3 RECENT NOMINATION EXCEPT FOR GOOD CAUSE OR DISQUALIFICATION.
4 IN THE EVENT A COURT DECIDES TO APPOINT A GUARDIAN, I DESIRE
5 THE FOLLOWING PERSON TO BE APPOINTED:

6 (INSERT NAME, ADDRESS, TELEPHONE NUMBER OF THE DESIGNATED
7 PERSON)

8 () THE APPOINTMENT OF A GUARDIAN OF MY PERSON WILL NOT GIVE
9 THE GUARDIAN THE POWER TO REVOKE, SUSPEND OR TERMINATE THIS
10 DECLARATION.

11 () UPON APPOINTMENT OF A GUARDIAN, I AUTHORIZE THE GUARDIAN
12 TO REVOKE, SUSPEND OR TERMINATE THIS DECLARATION.

13 PART III. MENTAL HEALTH CARE POWER OF ATTORNEY.

14 I, , HAVING THE CAPACITY TO MAKE MENTAL HEALTH
15 DECISIONS, AUTHORIZE MY DESIGNATED HEALTH CARE AGENT TO MAKE
16 CERTAIN DECISIONS ON MY BEHALF REGARDING MY MENTAL HEALTH
17 CARE. IF I HAVE NOT EXPRESSED A CHOICE IN THIS DOCUMENT OR IN
18 THE ACCOMPANYING DECLARATION, I AUTHORIZE MY AGENT TO MAKE
19 THE DECISION THAT MY AGENT DETERMINES IS THE DECISION I WOULD
20 MAKE IF I WERE COMPETENT TO DO SO.

21 A. DESIGNATION OF AGENT.

22 I HEREBY DESIGNATE AND APPOINT THE FOLLOWING PERSON AS MY
23 AGENT TO MAKE MENTAL HEALTH CARE DECISIONS FOR ME AS
24 AUTHORIZED IN THIS DOCUMENT. THIS AUTHORIZATION APPLIES ONLY
25 TO MENTAL HEALTH DECISIONS THAT ARE NOT ADDRESSED IN THE
26 ACCOMPANYING SIGNED DECLARATION.

27 (INSERT NAME OF DESIGNATED PERSON)

28 SIGNED:

29 (MY NAME, ADDRESS, TELEPHONE NUMBER)

30 (WITNESSES SIGNATURES)

1 (INSERT NAMES, ADDRESSES, TELEPHONE NUMBERS OF WITNESSES)
2 AGENT'S ACCEPTANCE:
3 I HEREBY ACCEPT DESIGNATION AS MENTAL HEALTH CARE AGENT FOR
4 (INSERT NAME OF DECLARANT)
5 AGENT'S SIGNATURE:
6 (INSERT NAME, ADDRESS, TELEPHONE NUMBER OF DESIGNATED PERSON)
7 B. DESIGNATION OF ALTERNATIVE AGENT.
8 IN THE EVENT THAT MY FIRST AGENT IS UNAVAILABLE OR UNABLE TO
9 SERVE AS MY MENTAL HEALTH CARE AGENT, I HEREBY DESIGNATE AND
10 APPOINT THE FOLLOWING INDIVIDUAL AS MY ALTERNATIVE MENTAL
11 HEALTH CARE AGENT TO MAKE MENTAL HEALTH CARE DECISIONS FOR ME
12 AS AUTHORIZED IN THIS DOCUMENT:
13 (INSERT NAME OF DESIGNATED PERSON)
14 SIGNED:
15 (MY NAME, ADDRESS, TELEPHONE NUMBER)
16 (WITNESSES SIGNATURES)
17 (INSERT NAMES, ADDRESSES, TELEPHONE NUMBERS OF WITNESSES)
18 ALTERNATIVE AGENT'S ACCEPTANCE:
19 I HEREBY ACCEPT DESIGNATION AS ALTERNATIVE MENTAL HEALTH CARE
20 AGENT FOR (INSERT NAME OF DECLARANT)
21 ALTERNATIVE AGENT'S SIGNATURE:
22 (INSERT NAME, ADDRESS, TELEPHONE NUMBER OF ALTERNATIVE AGENT)
23 C. WHEN THIS POWER OF ATTORNEY BECOME EFFECTIVE.
24 THIS POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE FOLLOWING
25 DESIGNATED TIME:
26 () WHEN I AM DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE
27 DECISIONS.
28 () WHEN THE FOLLOWING CONDITION IS MET:
29 (LIST CONDITION)
30 D. AUTHORITY GRANTED TO MY MENTAL HEALTH CARE AGENT.

1 I HEREBY GRANT TO MY AGENT FULL POWER AND AUTHORITY TO MAKE
2 MENTAL HEALTH CARE DECISIONS FOR ME CONSISTENT WITH THE
3 INSTRUCTIONS AND LIMITATIONS SET FORTH IN THIS DOCUMENT. IF I
4 HAVE NOT EXPRESSED A CHOICE IN THIS POWER OF ATTORNEY, OR IN
5 THE ACCOMPANYING DECLARATION, I AUTHORIZE MY AGENT TO MAKE
6 THE DECISION THAT MY AGENT DETERMINES IS THE DECISION I WOULD
7 MAKE IF I WERE COMPETENT TO DO SO.

8 (1) PREFERENCES REGARDING MEDICATIONS FOR PSYCHIATRIC
9 TREATMENT.

10 () MY AGENT IS AUTHORIZED TO CONSENT TO THE USE OF ANY
11 MEDICATIONS AFTER CONSULTATION WITH MY TREATING PSYCHIATRIST
12 AND ANY OTHER PERSONS MY AGENT CONSIDERS APPROPRIATE.

13 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO THE USE OF ANY
14 MEDICATIONS.

15 (2) PREFERENCES REGARDING ELECTROCONVULSIVE THERAPY
16 (ECT).

17 () MY AGENT IS AUTHORIZED TO CONSENT TO THE ADMINISTRATION
18 OF ELECTROCONVULSIVE THERAPY.

19 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO THE
20 ADMINISTRATION OF ELECTROCONVULSIVE THERAPY.

21 (3) PREFERENCES FOR EXPERIMENTAL STUDIES OR DRUG TRIALS.

22 () MY AGENT IS AUTHORIZED TO CONSENT TO MY PARTICIPATION IN
23 EXPERIMENTAL STUDIES IF, AFTER CONSULTATION WITH MY TREATING
24 PHYSICIAN AND ANY OTHER INDIVIDUALS MY AGENT DEEMS
25 APPROPRIATE, MY AGENT BELIEVES THAT THE POTENTIAL BENEFITS TO
26 ME OUTWEIGH THE POSSIBLE RISKS TO ME.

27 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO MY PARTICIPATION
28 IN EXPERIMENTAL STUDIES.

29 () MY AGENT IS AUTHORIZED TO CONSENT TO MY PARTICIPATION IN
30 DRUG TRIALS IF, AFTER CONSULTATION WITH MY TREATING PHYSICIAN

1 AND ANY OTHER INDIVIDUALS MY AGENT DEEMS APPROPRIATE, MY
2 AGENT BELIEVES THAT THE POTENTIAL BENEFITS TO ME OUTWEIGH THE
3 POSSIBLE RISKS TO ME.

4 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO MY PARTICIPATION
5 IN DRUG TRIALS.

6 E. REVOCATION.

7 THIS POWER OF ATTORNEY MAY BE REVOKED IN WHOLE OR IN PART AT
8 ANY TIME, EITHER ORALLY OR IN WRITING, AS LONG AS I HAVE NOT
9 BEEN FOUND TO BE INCAPABLE OF MAKING MENTAL HEALTH DECISIONS.

10 MY REVOCATION WILL BE EFFECTIVE UPON COMMUNICATION TO MY
11 ATTENDING PHYSICIAN OR OTHER MENTAL HEALTH CARE PROVIDER,
12 EITHER BY ME OR A WITNESS TO MY REVOCATION, OF THE INTENT TO
13 REVOKE. IF I CHOOSE TO REVOKE A PARTICULAR INSTRUCTION
14 CONTAINED IN THIS POWER OF ATTORNEY IN THE MANNER SPECIFIED,
15 I UNDERSTAND THAT THE OTHER INSTRUCTIONS CONTAINED IN THIS
16 POWER OF ATTORNEY WILL REMAIN EFFECTIVE UNTIL:

17 (1) I REVOKE THIS POWER OF ATTORNEY IN ITS ENTIRETY;

18 (2) I MAKE A NEW COMBINED MENTAL HEALTH CARE DECLARATION
19 AND POWER OF ATTORNEY; OR

20 (3) TWO YEARS FROM THE DATE THIS DOCUMENT WAS EXECUTED.

21 I UNDERSTAND THAT THIS POWER OF ATTORNEY WILL AUTOMATICALLY
22 TERMINATE TWO YEARS FROM THE DATE OF EXECUTION UNLESS I AM
23 DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE DECISIONS AT
24 THE TIME THAT THE POWER OF ATTORNEY WOULD EXPIRE.

25 I AM MAKING THIS COMBINED MENTAL HEALTH CARE DECLARATION AND
26 POWER OF ATTORNEY ON THE (INSERT DAY) DAY OF (INSERT MONTH),
27 (INSERT YEAR).

28 MY SIGNATURE:

29 (MY NAME, ADDRESS, TELEPHONE NUMBER)

30 WITNESSES SIGNATURES:

(NAMES, ADDRESSES, TELEPHONE NUMBERS OF WITNESSES).

IF THE PRINCIPAL MAKING THIS COMBINED MENTAL HEALTH CARE
DECLARATION AND POWER OF ATTORNEY IS UNABLE TO SIGN THIS
DOCUMENT, ANOTHER INDIVIDUAL MAY SIGN ON BEHALF OF AND AT THE
DIRECTION OF THE PRINCIPAL.

SIGNATURE OF PERSON SIGNING ON MY BEHALF:

SIGNATURE

(NAME, ADDRESS, TELEPHONE NUMBER)

SUBCHAPTER B

MENTAL HEALTH CARE DECLARATIONS

SEC.

5821. SHORT TITLE OF SUBCHAPTER.

5822. EXECUTION.

5823. FORM.

5824. OPERATION.

5825. REVOCATION.

5826. AMENDMENT.

§ 5821. SHORT TITLE OF SUBCHAPTER.

THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE
ADVANCE DIRECTIVE FOR MENTAL HEALTH CARE ACT.

§ 5822. EXECUTION.

(A) WHO MAY MAKE.--AN INDIVIDUAL WHO IS AT LEAST 18 YEARS OF
AGE OR AN EMANCIPATED MINOR AND HAS NOT BEEN DEEMED
INCAPACITATED PURSUANT TO SECTION 5511 (RELATING TO PETITION AND
HEARING; INDEPENDENT EVALUATION) OR SEVERELY MENTALLY DISABLED
PURSUANT TO SECTION 301 OF THE ACT OF JULY 9, 1976 (P.L.817,
NO.143), KNOWN AS THE MENTAL HEALTH PROCEDURES ACT, MAY MAKE A
DECLARATION GOVERNING THE INITIATION, CONTINUATION, WITHHOLDING
OR WITHDRAWAL OF MENTAL HEALTH TREATMENT.

(B) REQUIREMENTS.--A DECLARATION MUST BE:

(1) DATED AND SIGNED BY THE DECLARANT BY SIGNATURE OR MARK OR BY ANOTHER INDIVIDUAL ON BEHALF OF AND AT THE DIRECTION OF THE DECLARANT.

(2) WITNESSED BY TWO INDIVIDUALS, EACH OF WHOM MUST BE AT LEAST 18 YEARS OF AGE.

(C) WITNESSES.--

(1) AN INDIVIDUAL WHO SIGNS A DECLARATION ON BEHALF OF AND AT THE DIRECTION OF A DECLARANT MAY NOT WITNESS THE DECLARATION.

(2) A MENTAL HEALTH CARE PROVIDER AND ITS AGENT MAY NOT SIGN A DECLARATION ON BEHALF OF AND AT THE DIRECTION OF A DECLARANT IF THE MENTAL HEALTH CARE PROVIDER OR AGENT PROVIDES MENTAL HEALTH CARE SERVICES TO THE DECLARANT.

§ 5823. FORM.

A DECLARATION MAY BE IN THE FOLLOWING FORM OR ANY OTHER WRITTEN FORM THAT EXPRESSES THE WISHES OF A DECLARANT REGARDING THE INITIATION, CONTINUATION OR REFUSAL OF MENTAL HEALTH TREATMENT AND MAY INCLUDE OTHER SPECIFIC DIRECTIONS, INCLUDING, BUT NOT LIMITED TO, DESIGNATION OF ANOTHER INDIVIDUAL TO MAKE MENTAL HEALTH TREATMENT DECISIONS FOR THE DECLARANT IF THE DECLARANT IS INCAPABLE OF MAKING MENTAL HEALTH DECISIONS:

MENTAL HEALTH CARE DECLARATION.

I, , HAVING THE CAPACITY TO MAKE MENTAL HEALTH DECISIONS, WILLFULLY AND VOLUNTARILY MAKE THIS DECLARATION REGARDING MY MENTAL HEALTH CARE.

I UNDERSTAND THAT MENTAL HEALTH CARE INCLUDES ANY CARE, TREATMENT, SERVICE OR PROCEDURE TO MAINTAIN, DIAGNOSE, TREAT OR PROVIDE FOR MENTAL HEALTH, INCLUDING ANY MEDICATION PROGRAM AND THERAPEUTIC TREATMENT. MENTAL HEALTH CARE DOES NOT INCLUDE ELECTROCONVULSIVE THERAPY, LABORATORY TRIALS OR

RESEARCH, UNLESS SPECIFICALLY PROVIDED FOR IN THIS DOCUMENT.
MENTAL HEALTH CARE DOES NOT INCLUDE PSYCHOSURGERY OR
TERMINATION OF PARENTAL RIGHTS.

I UNDERSTAND THAT MY INCAPACITY WILL BE DETERMINED BY
EXAMINATION BY A PSYCHIATRIST AND ONE OF THE FOLLOWING:
ANOTHER PSYCHIATRIST, PSYCHOLOGIST, FAMILY PHYSICIAN,
ATTENDING PHYSICIAN OR MENTAL HEALTH TREATMENT PROFESSIONAL.
WHENEVER POSSIBLE, ONE OF THE DECISION MAKERS WILL BE ONE OF
MY TREATING PROFESSIONALS.

A. WHEN THIS DECLARATION BECOMES EFFECTIVE.

THIS DECLARATION BECOMES EFFECTIVE AT THE FOLLOWING
DESIGNATED TIME:

() WHEN I AM DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE
DECISIONS.

() WHEN THE FOLLOWING CONDITION IS MET:
(LIST CONDITION)

B. TREATMENT PREFERENCES.

1. CHOICE OF TREATMENT FACILITY.

() IN THE EVENT THAT I REQUIRE COMMITMENT TO A PSYCHIATRIC
TREATMENT FACILITY, I WOULD PREFER TO BE ADMITTED TO THE
FOLLOWING FACILITY:

(INSERT NAME AND ADDRESS OF FACILITY)

() IN THE EVENT THAT I REQUIRE COMMITMENT TO A PSYCHIATRIC
TREATMENT FACILITY, I DO NOT WISH TO BE COMMITTED TO THE
FOLLOWING FACILITY:

(INSERT NAME AND ADDRESS OF FACILITY)

I UNDERSTAND THAT MY PHYSICIAN MAY HAVE TO PLACE ME IN A
FACILITY THAT IS NOT MY PREFERENCE.

2. PREFERENCES REGARDING MEDICATIONS FOR PSYCHIATRIC
TREATMENT.

() I CONSENT TO THE MEDICATIONS THAT MY TREATING PHYSICIAN
RECOMMENDS WITH THE FOLLOWING EXCEPTION OR LIMITATION:

(LIST MEDICATION AND REASON FOR EXCEPTION OR LIMITATION)
THIS EXCEPTION OR LIMITATION APPLIES TO GENERIC, BRAND NAME
AND TRADE NAME EQUIVALENTS. I UNDERSTAND THAT DOSAGE
INSTRUCTIONS ARE NOT BINDING ON MY PHYSICIAN.

() I DO NOT CONSENT TO THE USE OF ANY MEDICATIONS.

3. PREFERENCES REGARDING ELECTROCONVULSIVE THERAPY
(ECT).

() I CONSENT TO THE ADMINISTRATION OF ELECTROCONVULSIVE
THERAPY.

() I DO NOT CONSENT TO THE ADMINISTRATION OF
ELECTROCONVULSIVE THERAPY.

4. PREFERENCES FOR EXPERIMENTAL STUDIES OR DRUG TRIALS.

() I CONSENT TO PARTICIPATION IN EXPERIMENTAL STUDIES IF MY
TREATING PHYSICIAN BELIEVES THAT THE POTENTIAL BENEFITS TO ME
OUTWEIGH THE POSSIBLE RISKS TO ME.

() I DO NOT CONSENT TO PARTICIPATION IN EXPERIMENTAL
STUDIES.

() I CONSENT TO PARTICIPATION IN DRUG TRIALS IF MY TREATING
PHYSICIAN BELIEVES THAT THE POTENTIAL BENEFITS TO ME OUTWEIGH
THE POSSIBLE RISKS TO ME.

() I DO NOT CONSENT TO PARTICIPATION IN ANY DRUG TRIALS.

5. ADDITIONAL INSTRUCTIONS OR INFORMATION:
EXAMPLES OF OTHER INSTRUCTIONS OR INFORMATION THAT MAY BE
INCLUDED:

ACTIVITIES THAT HELP OR WORSEN SYMPTOMS.

TYPE OF INTERVENTION PREFERRED IN THE EVENT OF A
CRISIS.

MENTAL AND PHYSICAL HEALTH HISTORY.

DIETARY REQUIREMENTS.
RELIGIOUS PREFERENCES.
TEMPORARY CUSTODY OF CHILDREN.
FAMILY NOTIFICATION.
LIMITATIONS ON THE RELEASE OR DISCLOSURE OF MENTAL
HEALTH RECORDS.
INSTRUCTIONS RELATED TO PREFERENCES IF YOU ARE
PREGNANT.
OTHER MATTERS OF IMPORTANCE.

C. REVOCATION.

THIS DECLARATION MAY BE REVOKED IN WHOLE OR IN PART AT ANY
TIME, EITHER ORALLY OR IN WRITING, AS LONG AS I HAVE NOT BEEN
FOUND TO BE INCAPABLE OF MAKING MENTAL HEALTH DECISIONS.
MY REVOCATION WILL BE EFFECTIVE UPON COMMUNICATION TO MY
ATTENDING PHYSICIAN OR OTHER MENTAL HEALTH CARE PROVIDER,
EITHER BY ME OR A WITNESS TO MY REVOCATION, OF THE INTENT TO
REVOKE. IF I CHOOSE TO REVOKE A PARTICULAR INSTRUCTION
CONTAINED IN THIS DECLARATION IN THE MANNER SPECIFIED, I
UNDERSTAND THAT THE OTHER INSTRUCTIONS CONTAINED IN THIS
DECLARATION WILL REMAIN EFFECTIVE UNTIL:

- (1) I REVOKE THIS DECLARATION IN ITS ENTIRETY;
- (2) I MAKE A NEW MENTAL HEALTH CARE DECLARATION; OR
- (3) TWO YEARS AFTER THE DATE THIS DOCUMENT WAS EXECUTED.

D. TERMINATION.

I UNDERSTAND THAT THIS DECLARATION WILL AUTOMATICALLY
TERMINATE TWO YEARS FROM THE DATE OF EXECUTION UNLESS I AM
DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE DECISIONS AT
THE TIME THAT THE DECLARATION WOULD EXPIRE.

E. PREFERENCE AS TO A COURT-APPOINTED GUARDIAN.

I UNDERSTAND THAT I MAY NOMINATE A GUARDIAN OF MY PERSON FOR

1 CONSIDERATION BY THE COURT IF INCAPACITY PROCEEDINGS ARE
2 COMMENCED PURSUANT TO 20 PA.C.S. § 5511. I UNDERSTAND THAT
3 THE COURT WILL APPOINT A GUARDIAN IN ACCORDANCE WITH MY MOST
4 RECENT NOMINATION EXCEPT FOR GOOD CAUSE OR DISQUALIFICATION.
5 IN THE EVENT A COURT DECIDES TO APPOINT A GUARDIAN, I DESIRE
6 THE FOLLOWING PERSON TO BE APPOINTED:

7 (INSERT NAME, ADDRESS AND TELEPHONE NUMBER
8 OF DESIGNATED PERSON)

9 () THE APPOINTMENT OF A GUARDIAN OF MY PERSON WILL NOT GIVE
10 THE GUARDIAN THE POWER TO REVOKE, SUSPEND OR TERMINATE THIS
11 DECLARATION.

12 () UPON APPOINTMENT OF A GUARDIAN, I AUTHORIZE THE GUARDIAN
13 TO REVOKE, SUSPEND OR TERMINATE THIS DECLARATION.

14 I AM MAKING THIS DECLARATION ON THE (INSERT DAY)
15 DAY OF (INSERT MONTH), (INSERT YEAR).

16 MY SIGNATURE: (MY NAME, ADDRESS, TELEPHONE NUMBER)

17 WITNESSES' SIGNATURES: (NAMES, ADDRESSES, TELEPHONE NUMBERS
18 OF WITNESSES)

19 IF THE PRINCIPAL MAKING THIS DECLARATION IS UNABLE TO SIGN
20 IT, ANOTHER INDIVIDUAL MAY SIGN ON BEHALF OF AND AT THE
21 DIRECTION OF THE PRINCIPAL.

22 SIGNATURE OF PERSON SIGNING ON MY BEHALF:

23 (NAME, ADDRESS AND TELEPHONE NUMBER)

24 § 5824. OPERATION.

25 (A) WHEN OPERATIVE.--A DECLARATION BECOMES OPERATIVE WHEN:

26 (1) A COPY IS PROVIDED TO THE ATTENDING PHYSICIAN.

27 (2) THE CONDITIONS STATED IN THE DECLARATION ARE MET.

28 (B) COMPLIANCE.--WHEN A DECLARATION BECOMES OPERATIVE, THE
29 ATTENDING PHYSICIAN AND OTHER MENTAL HEALTH CARE PROVIDERS SHALL
30 ACT IN ACCORDANCE WITH ITS PROVISIONS OR COMPLY WITH THE

1 TRANSFER PROVISIONS OF SECTION 5804 (RELATING TO COMPLIANCE).

2 (C) INVALIDITY OF SPECIFIC DIRECTION.--IF A SPECIFIC
3 DIRECTION IN THE DECLARATION IS HELD TO BE INVALID, THE
4 INVALIDITY SHALL NOT BE CONSTRUED TO NEGATE OTHER DIRECTIONS IN
5 THE DECLARATION THAT CAN BE EFFECTED WITHOUT THE INVALID
6 DIRECTION.

7 (D) MENTAL HEALTH RECORD.--A PHYSICIAN OR OTHER MENTAL
8 HEALTH CARE PROVIDER TO WHOM A COPY OF A DECLARATION IS
9 FURNISHED SHALL MAKE IT A PART OF THE MENTAL HEALTH RECORD OF
10 THE DECLARANT, FOR AT LEAST TWO YEARS FROM THE DATE OF
11 EXECUTION, AND IF UNWILLING TO COMPLY WITH THE DECLARATION,
12 PROMPTLY SO ADVISE THOSE LISTED IN SECTION 5804(A)(2).

13 (E) DURATION.--A DECLARATION SHALL BE VALID UNTIL REVOKED BY
14 THE DECLARANT OR UNTIL TWO YEARS FROM THE DATE OF EXECUTION. IF
15 A DECLARATION FOR MENTAL HEALTH TREATMENT HAS BEEN INVOKED AND
16 IS IN EFFECT AT THE SPECIFIED EXPIRATION DATE AFTER ITS
17 EXECUTION, THE DECLARATION SHALL REMAIN EFFECTIVE UNTIL THE
18 PRINCIPAL IS NO LONGER INCAPABLE.

19 (F) ABSENCE OF DECLARATION.--IF AN INDIVIDUAL DOES NOT MAKE
20 A DECLARATION, A PRESUMPTION DOES NOT ARISE REGARDING THE INTENT
21 OF THE INDIVIDUAL TO CONSENT TO OR TO REFUSE A MENTAL HEALTH
22 TREATMENT.

23 § 5825. REVOCATION.

24 (A) WHEN DECLARATION MAY BE REVOKED.--AN INDIVIDUAL SHALL
25 SPECIFY IN A DECLARATION WHETHER IT MAY BE REVOKED BY THE
26 INDIVIDUAL AT ANY TIME AND IN ANY MANNER, ONLY IF THE INDIVIDUAL
27 HAS NOT BEEN FOUND TO BE INCAPABLE OF MAKING MENTAL HEALTH
28 TREATMENT DECISIONS.

29 (B) EFFECT OF REVOCATION.--A REVOCATION OF A DECLARATION
30 SHALL BE EFFECTIVE UPON COMMUNICATION TO THE ATTENDING PHYSICIAN

1 OR OTHER MENTAL HEALTH CARE PROVIDER BY THE DECLARANT OR A
2 WITNESS TO THE REVOCATION OF THE INTENT TO REVOKE.

3 (C) MENTAL HEALTH RECORD.--AN ATTENDING PHYSICIAN OR OTHER
4 MENTAL HEALTH CARE PROVIDER SHALL MAKE REVOCATION OR A
5 DECLARATION PART OF THE MENTAL HEALTH RECORD OF THE DECLARANT.
6 § 5826. AMENDMENT.

7 WHILE HAVING THE CAPACITY TO MAKE MENTAL HEALTH DECISIONS, A
8 DECLARANT MAY AMEND A DECLARATION BY A WRITING EXECUTED IN
9 ACCORDANCE WITH THE PROVISIONS OF SECTION 5822 (RELATING TO
10 EXECUTION).

11 SUBCHAPTER C

12 MENTAL HEALTH CARE POWERS OF ATTORNEY

13 SEC.

14 5831. SHORT TITLE OF SUBCHAPTER.

15 5832. EXECUTION.

16 5833. FORM.

17 5834. OPERATION.

18 5835. APPOINTMENT OF MENTAL HEALTH CARE AGENTS.

19 5836. AUTHORITY OF MENTAL HEALTH CARE AGENT.

20 5837. REMOVAL OF AGENT.

21 5838. EFFECT OF DIVORCE.

22 5839. REVOCATION.

23 5840. AMENDMENT.

24 5841. RELATION OF MENTAL HEALTH CARE AGENT TO COURT-APPOINTED
25 GUARDIAN AND OTHER AGENTS.

26 5842. DUTIES OF ATTENDING PHYSICIAN AND MENTAL HEALTH CARE
27 PROVIDER.

28 5843. CONSTRUCTION.

29 5844. CONFLICTING MENTAL HEALTH CARE POWERS OF ATTORNEY.

30 5845. VALIDITY.

1 § 5831. SHORT TITLE OF SUBCHAPTER.

2 THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE MENTAL
3 HEALTH CARE AGENTS ACT.

4 § 5832. EXECUTION.

5 (A) WHO MAY MAKE.--AN INDIVIDUAL WHO IS AT LEAST 18 YEARS OF
6 AGE OR AN EMANCIPATED MINOR AND WHO HAS NOT BEEN DEEMED
7 INCAPACITATED PURSUANT TO SECTION 5511 (RELATING TO PETITION AND
8 HEARING; INDEPENDENT EVALUATION) OR FOUND TO BE SEVERELY
9 MENTALLY DISABLED PURSUANT TO SECTION 302 OF THE ACT OF JULY 9,
10 1976 (P.L.817, NO.143), KNOWN AS THE MENTAL HEALTH PROCEDURES
11 ACT, MAY MAKE A POWER OF ATTORNEY GOVERNING THE INITIATION,
12 CONTINUATION, WITHHOLDING OR WITHDRAWAL OF MENTAL HEALTH
13 TREATMENT.

14 (B) REQUIREMENTS.--A POWER OF ATTORNEY MUST BE:

15 (1) DATED AND SIGNED BY THE PRINCIPAL BY SIGNATURE OR
16 MARK OR BY ANOTHER INDIVIDUAL ON BEHALF OF AND AT THE
17 DIRECTION OF THE PRINCIPAL.

18 (2) WITNESSED BY TWO INDIVIDUALS, EACH OF WHOM MUST BE
19 AT LEAST 18 YEARS OF AGE.

20 (C) WITNESSES.--

21 (1) AN INDIVIDUAL WHO SIGNS A POWER OF ATTORNEY ON
22 BEHALF OF AND AT THE DIRECTION OF A PRINCIPAL MAY NOT WITNESS
23 THE POWER OF ATTORNEY.

24 (2) A MENTAL HEALTH CARE PROVIDER AND ITS AGENT MAY NOT
25 SIGN A POWER OF ATTORNEY ON BEHALF OF AND AT THE DIRECTION OF
26 A PRINCIPAL IF THE MENTAL HEALTH CARE PROVIDER OR AGENT
27 PROVIDES MENTAL HEALTH CARE SERVICES TO THE PRINCIPAL.

28 § 5833. FORM.

29 (A) REQUIREMENTS.--A MENTAL HEALTH CARE POWER OF ATTORNEY
30 MUST DO THE FOLLOWING:

1 HEALTH CARE. IF I HAVE NOT EXPRESSED A CHOICE IN THIS
2 DOCUMENT, I AUTHORIZE MY AGENT TO MAKE THE DECISION THAT MY
3 AGENT DETERMINES IS THE DECISION I WOULD MAKE IF I WERE
4 COMPETENT TO DO SO.

5 I UNDERSTAND THAT MENTAL HEALTH CARE INCLUDES ANY CARE,
6 TREATMENT, SERVICE OR PROCEDURE TO MAINTAIN, DIAGNOSE, TREAT
7 OR PROVIDE FOR MENTAL HEALTH, INCLUDING ANY MEDICATION
8 PROGRAM AND THERAPEUTIC TREATMENT. MENTAL HEALTH CARE DOES
9 NOT INCLUDE ELECTROCONVULSIVE THERAPY, LABORATORY TRIALS OR
10 RESEARCH, UNLESS SPECIFICALLY PROVIDED FOR IN THIS DOCUMENT.
11 MENTAL HEALTH CARE DOES NOT INCLUDE PSYCHOSURGERY OR
12 TERMINATION OF PARENTAL RIGHTS.

13 I UNDERSTAND THAT MY INCAPACITY WILL BE DETERMINED BY
14 EXAMINATION BY A PSYCHIATRIST AND ONE OF THE FOLLOWING:
15 ANOTHER PSYCHIATRIST, PSYCHOLOGIST, FAMILY PHYSICIAN,
16 ATTENDING PHYSICIAN OR MENTAL HEALTH TREATMENT PROFESSIONAL.
17 WHENEVER POSSIBLE, ONE OF THE DECISION MAKERS SHALL BE ONE OF
18 MY TREATING PROFESSIONALS.

19 A. DESIGNATION OF AGENT. I HEREBY DESIGNATE AND APPOINT THE
20 FOLLOWING PERSON AS MY AGENT TO MAKE MENTAL HEALTH CARE
21 DECISIONS FOR ME AS AUTHORIZED IN THIS DOCUMENT:

22 (INSERT NAME OF DESIGNATED PERSON)

23 SIGNED:

24 (MY NAME, ADDRESS, TELEPHONE NUMBER)

25 (WITNESSES' SIGNATURES)

26 (NAMES, ADDRESSES, TELEPHONE NUMBERS OF WITNESSES)

27 AGENT'S ACCEPTANCE:

28 I HEREBY ACCEPT DESIGNATION AS MENTAL HEALTH CARE AGENT FOR
29 (INSERT NAME OF DECLARANT)

30 AGENT'S SIGNATURE:

1 (INSERT NAME, ADDRESS, TELEPHONE NUMBER OF DESIGNATED PERSON)

2 B. DESIGNATION OF ALTERNATIVE AGENT.

3 IN THE EVENT THAT MY FIRST AGENT IS UNAVAILABLE OR UNABLE TO
4 SERVE AS MY MENTAL HEALTH CARE AGENT, I HEREBY DESIGNATE AND
5 APPOINT THE FOLLOWING INDIVIDUAL AS MY ALTERNATIVE MENTAL
6 HEALTH CARE AGENT TO MAKE MENTAL HEALTH CARE DECISIONS FOR ME
7 AS AUTHORIZED IN THIS DOCUMENT:

8 (INSERT NAME OF DESIGNATED PERSON)

9 SIGNED:

10 (WITNESSES' SIGNATURES)

11 (NAMES, ADDRESSES, TELEPHONE NUMBERS OF WITNESSES)

12 ALTERNATIVE AGENT'S ACCEPTANCE:

13 I HEREBY ACCEPT DESIGNATION AS ALTERNATIVE MENTAL HEALTH CARE
14 AGENT FOR

15 (INSERT NAME OF DECLARANT)

16 ALTERNATIVE AGENT'S SIGNATURE: .

17 (INSERT NAME, ADDRESS, TELEPHONE NUMBER)

18 C. WHEN THIS POWER OF ATTORNEY BECOMES EFFECTIVE.

19 THIS POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE FOLLOWING
20 DESIGNATED TIME:

21 () WHEN I AM DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE
22 DECISIONS.

23 () WHEN THE FOLLOWING CONDITION IS MET:

24 (LIST CONDITION)

25 D. AUTHORITY GRANTED TO MY MENTAL HEALTH CARE AGENT.

26 I HEREBY GRANT TO MY AGENT FULL POWER AND AUTHORITY TO MAKE
27 MENTAL HEALTH CARE DECISIONS FOR ME CONSISTENT WITH THE
28 INSTRUCTIONS AND LIMITATIONS SET FORTH IN THIS POWER OF
29 ATTORNEY. IF I HAVE NOT EXPRESSED A CHOICE IN THIS POWER OF
30 ATTORNEY, I AUTHORIZE MY AGENT TO MAKE THE DECISION THAT MY

1 AGENT DETERMINES IS THE DECISION I WOULD MAKE IF I WERE
2 COMPETENT TO DO SO.

3 1. TREATMENT PREFERENCES.

4 (A) CHOICE OF TREATMENT FACILITY.

5 () IN THE EVENT THAT I REQUIRE COMMITMENT TO A PSYCHIATRIC
6 TREATMENT FACILITY, I WOULD PREFER TO BE ADMITTED TO THE
7 FOLLOWING FACILITY:

8 (INSERT NAME AND ADDRESS OF FACILITY)

9 () IN THE EVENT THAT I REQUIRE COMMITMENT TO A PSYCHIATRIC
10 TREATMENT FACILITY, I DO NOT WISH TO BE COMMITTED TO THE
11 FOLLOWING FACILITY:

12 (INSERT NAME AND ADDRESS OF FACILITY)

13 I UNDERSTAND THAT MY PHYSICIAN MAY HAVE TO PLACE ME IN A
14 FACILITY THAT IS NOT MY PREFERENCE.

15 (B) PREFERENCES REGARDING MEDICATIONS FOR PSYCHIATRIC
16 TREATMENT.

17 () I CONSENT TO THE MEDICATIONS THAT MY AGENT AGREES TO
18 AFTER CONSULTATION WITH MY TREATING PHYSICIAN AND ANY OTHER
19 PERSONS MY AGENT CONSIDERS APPROPRIATE.

20 () I CONSENT TO THE MEDICATIONS THAT MY AGENT AGREES TO,
21 WITH THE FOLLOWING EXCEPTION OR LIMITATION:

22 (LIST EXCEPTION OR LIMITATION)

23 THIS EXCEPTION OR LIMITATION APPLIES TO GENERIC, BRAND NAME
24 AND TRADE NAME EQUIVALENTS.

25 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO THE USE OF ANY
26 MEDICATIONS.

27 (C) PREFERENCES REGARDING ELECTROCONVULSIVE THERAPY
28 (ECT).

29 () MY AGENT IS AUTHORIZED TO CONSENT TO THE ADMINISTRATION
30 OF ELECTROCONVULSIVE THERAPY.

1 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO THE
2 ADMINISTRATION OF ELECTROCONVULSIVE THERAPY.

3 (D) PREFERENCES FOR EXPERIMENTAL STUDIES OR DRUG TRIALS.

4 () MY AGENT IS AUTHORIZED TO CONSENT TO MY PARTICIPATION IN
5 EXPERIMENTAL STUDIES IF, AFTER CONSULTATION WITH MY TREATING
6 PHYSICIAN AND ANY OTHER INDIVIDUALS MY AGENT DEEMS
7 APPROPRIATE, MY AGENT BELIEVES THAT THE POTENTIAL BENEFITS TO
8 ME OUTWEIGH THE POSSIBLE RISKS TO ME.

9 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO MY
10 PARTICIPATION IN EXPERIMENTAL STUDIES.

11 () MY AGENT IS AUTHORIZED TO CONSENT TO MY PARTICIPATION IN
12 DRUG TRIALS IF, AFTER CONSULTATION WITH MY TREATING PHYSICIAN
13 AND ANY OTHER INDIVIDUALS MY AGENT DEEMS APPROPRIATE, MY
14 AGENT BELIEVES THAT THE POTENTIAL BENEFITS TO ME OUTWEIGH THE
15 POSSIBLE RISKS TO ME.

16 () MY AGENT IS NOT AUTHORIZED TO CONSENT TO MY
17 PARTICIPATION IN DRUG TRIALS.

18 (E) ADDITIONAL INFORMATION AND INSTRUCTIONS.

19 EXAMPLES OF OTHER INFORMATION THAT MAY BE INCLUDED:

20 ACTIVITIES THAT HELP OR WORSEN SYMPTOMS.

21 TYPE OF INTERVENTION PREFERRED IN THE EVENT OF A
22 CRISIS.

23 MENTAL AND PHYSICAL HEALTH HISTORY.

24 DIETARY REQUIREMENTS.

25 RELIGIOUS PREFERENCES.

26 TEMPORARY CUSTODY OF CHILDREN.

27 FAMILY NOTIFICATION.

28 LIMITATIONS ON RELEASE OR DISCLOSURE OF MENTAL
29 HEALTH RECORDS.

30 INSTRUCTIONS RELATED TO PREFERENCES IF YOU ARE

1 PREGNANT.

2 OTHER MATTERS OF IMPORTANCE.

3 E. REVOCATION.

4 THIS POWER OF ATTORNEY MAY BE REVOKED IN WHOLE OR IN PART AT
5 ANY TIME, EITHER ORALLY OR IN WRITING, AS LONG AS I HAVE NOT
6 BEEN FOUND TO BE INCAPABLE OF MAKING MENTAL HEALTH DECISIONS.
7 MY REVOCATION WILL BE EFFECTIVE UPON COMMUNICATION TO MY
8 ATTENDING PHYSICIAN OR OTHER MENTAL HEALTH CARE PROVIDER,
9 EITHER BY ME OR A WITNESS TO MY REVOCATION, OF THE INTENT TO
10 REVOKE. IF I CHOOSE TO REVOKE A PARTICULAR INSTRUCTION
11 CONTAINED IN THIS POWER OF ATTORNEY IN THE MANNER SPECIFIED,
12 I UNDERSTAND THAT THE OTHER INSTRUCTIONS CONTAINED IN THIS
13 POWER OF ATTORNEY WILL REMAIN EFFECTIVE UNTIL:

14 (1) I REVOKE THIS POWER OF ATTORNEY IN ITS ENTIRETY;

15 (2) I MAKE A NEW MENTAL HEALTH CARE POWER OF ATTORNEY;

16 OR

17 (3) TWO YEARS AFTER THE DATE THIS DOCUMENT WAS EXECUTED.

18 F. TERMINATION.

19 I UNDERSTAND THAT THIS POWER OF ATTORNEY WILL AUTOMATICALLY
20 TERMINATE TWO YEARS FROM THE DATE OF EXECUTION UNLESS I AM
21 DEEMED INCAPABLE OF MAKING MENTAL HEALTH CARE DECISIONS AT
22 THE TIME THE POWER OF ATTORNEY WOULD EXPIRE.

23 G. PREFERENCE AS TO A COURT-APPOINTED GUARDIAN.

24 I UNDERSTAND THAT I MAY NOMINATE A GUARDIAN OF MY PERSON FOR
25 CONSIDERATION BY THE COURT IF INCAPACITY PROCEEDINGS ARE
26 COMMENCED PURSUANT TO 20 PA.C.S. § 5511. I UNDERSTAND THAT
27 THE COURT WILL APPOINT A GUARDIAN IN ACCORDANCE WITH MY MOST
28 RECENT NOMINATION EXCEPT FOR GOOD CAUSE OR DISQUALIFICATION.
29 IN THE EVENT A COURT DECIDES TO APPOINT A GUARDIAN, I DESIRE
30 THE FOLLOWING PERSON TO BE APPOINTED:

1 (INSERT NAME, ADDRESS, TELEPHONE NUMBER OF DESIGNATED PERSON)
2 () THE APPOINTMENT OF A GUARDIAN OF MY PERSON WILL NOT GIVE
3 THE GUARDIAN THE POWER TO REVOKE, SUSPEND OR TERMINATE THIS
4 POWER OF ATTORNEY.

5 () UPON APPOINTMENT OF A GUARDIAN, I AUTHORIZE THE GUARDIAN
6 TO REVOKE, SUSPEND OR TERMINATE THIS POWER OF ATTORNEY.

7 I AM MAKING THIS POWER OF ATTORNEY ON THE (INSERT DAY) OF
8 (INSERT MONTH), (INSERT YEAR).

9 MY SIGNATURE

10 (MY NAME, ADDRESS, TELEPHONE NUMBER)

11 WITNESSES' SIGNATURES:

12 (NAMES, ADDRESSES, TELEPHONE NUMBERS OF WITNESSES)

13 IF THE PRINCIPAL MAKING THIS POWER OF ATTORNEY IS UNABLE TO
14 SIGN IT, ANOTHER INDIVIDUAL MAY SIGN ON BEHALF OF AND AT THE
15 DIRECTION OF THE PRINCIPAL.

16 SIGNATURE OF PERSON SIGNING ON MY BEHALF:

17 SIGNATURE

18 (NAME, ADDRESS TELEPHONE NUMBER)

19 § 5834. OPERATION.

20 (A) WHEN OPERATIVE.--A MENTAL HEALTH CARE POWER OF ATTORNEY
21 SHALL BECOME OPERATIVE WHEN:

22 (1) A COPY IS PROVIDED TO THE ATTENDING PHYSICIAN.

23 (2) THE CONDITIONS STATED IN THE POWER OF ATTORNEY ARE
24 MET.

25 (B) INVALIDITY OF SPECIFIC DIRECTION.--IF A SPECIFIC
26 DIRECTION IN A MENTAL HEALTH CARE POWER OF ATTORNEY IS HELD TO
27 BE INVALID, THE INVALIDITY DOES NOT NEGATE OTHER DIRECTIONS IN
28 THE MENTAL HEALTH CARE POWER OF ATTORNEY THAT CAN BE EFFECTED
29 WITHOUT THE INVALID DIRECTION.

30 (C) DURATION.--A POWER OF ATTORNEY SHALL BE VALID UNTIL

1 REVOKED BY THE PRINCIPAL OR UNTIL TWO YEARS AFTER THE DATE OF
2 EXECUTION. IF A POWER OF ATTORNEY FOR MENTAL HEALTH TREATMENT
3 HAS BEEN INVOKED AND IS IN EFFECT AT THE SPECIFIED DATE OF
4 EXPIRATION AFTER ITS EXECUTION, THE POWER OF ATTORNEY SHALL
5 REMAIN EFFECTIVE UNTIL THE PRINCIPAL IS NO LONGER INCAPABLE.

6 (D) COURT APPROVAL UNNECESSARY.--A MENTAL HEALTH CARE
7 DECISION MADE BY A MENTAL HEALTH CARE AGENT FOR A PRINCIPAL
8 SHALL BE EFFECTIVE WITHOUT COURT APPROVAL.

9 § 5835. APPOINTMENT OF MENTAL HEALTH CARE AGENTS.

10 (A) SUCCESSOR MENTAL HEALTH CARE AGENTS.--A PRINCIPAL MAY
11 APPOINT ONE OR MORE SUCCESSOR AGENTS WHO SHALL SERVE IN THE
12 ORDER NAMED IN THE MENTAL HEALTH CARE POWER OF ATTORNEY UNLESS
13 THE PRINCIPAL EXPRESSLY DIRECTS TO THE CONTRARY.

14 (B) WHO MAY NOT BE APPOINTED MENTAL HEALTH CARE AGENT.--
15 UNLESS RELATED TO THE PRINCIPAL BY BLOOD, MARRIAGE OR ADOPTION,
16 A PRINCIPAL MAY NOT APPOINT ANY OF THE FOLLOWING TO BE THE
17 MENTAL HEALTH CARE AGENT:

18 (1) THE PRINCIPAL'S ATTENDING PHYSICIAN OR OTHER MENTAL
19 HEALTH CARE PROVIDER, OR AN EMPLOYEE OF THE ATTENDING
20 PHYSICIAN OR OTHER MENTAL HEALTH CARE PROVIDER.

21 (2) AN OWNER, OPERATOR OR EMPLOYEE OF A RESIDENTIAL
22 FACILITY IN WHICH THE PRINCIPAL RECEIVES CARE.

23 § 5836. AUTHORITY OF MENTAL HEALTH CARE AGENT.

24 (A) EXTENT OF AUTHORITY.--EXCEPT AS EXPRESSLY PROVIDED
25 OTHERWISE IN A MENTAL HEALTH CARE POWER OF ATTORNEY AND SUBJECT
26 TO SUBSECTIONS (B) AND (C), A MENTAL HEALTH CARE AGENT MAY MAKE
27 ANY MENTAL HEALTH CARE DECISION AND EXERCISE ANY RIGHT AND POWER
28 REGARDING THE PRINCIPAL'S CARE, CUSTODY AND MENTAL HEALTH CARE
29 TREATMENT THAT THE PRINCIPAL COULD HAVE MADE AND EXERCISED.

30 (B) POWERS NOT GRANTED.--A MENTAL HEALTH CARE POWER OF

1 ATTORNEY MAY NOT CONVEY THE POWER TO RELINQUISH PARENTAL RIGHTS
2 OR CONSENT TO PSYCHOSURGERY.

3 (C) POWERS AND DUTIES ONLY SPECIFICALLY GRANTED.--UNLESS
4 SPECIFICALLY INCLUDED IN A MENTAL HEALTH CARE POWER OF ATTORNEY,
5 THE AGENT SHALL NOT HAVE THE POWER TO CONSENT TO
6 ELECTROCONVULSIVE THERAPY OR TO EXPERIMENTAL PROCEDURES OR
7 RESEARCH.

8 (D) MENTAL HEALTH CARE DECISIONS.--AFTER CONSULTATION WITH
9 MENTAL HEALTH CARE PROVIDERS AND AFTER CONSIDERATION OF THE
10 PROGNOSIS AND ACCEPTABLE ALTERNATIVES REGARDING DIAGNOSIS,
11 TREATMENTS AND SIDE EFFECTS, A MENTAL HEALTH CARE AGENT SHALL
12 MAKE MENTAL HEALTH CARE DECISIONS IN ACCORDANCE WITH THE MENTAL
13 HEALTH CARE AGENT'S UNDERSTANDING AND INTERPRETATION OF THE
14 INSTRUCTIONS GIVEN BY THE PRINCIPAL AT A TIME WHEN THE PRINCIPAL
15 HAD THE CAPACITY TO MAKE AND COMMUNICATE MENTAL HEALTH CARE
16 DECISIONS. INSTRUCTIONS INCLUDE A DECLARATION MADE BY THE
17 PRINCIPAL AND ANY CLEAR WRITTEN OR VERBAL DIRECTIONS THAT COVER
18 THE SITUATION PRESENTED. IN THE ABSENCE OF INSTRUCTIONS, THE
19 MENTAL HEALTH CARE AGENT SHALL MAKE MENTAL HEALTH CARE DECISIONS
20 CONFORMING WITH THE MENTAL HEALTH CARE AGENT'S ASSESSMENT OF THE
21 PRINCIPAL'S PREFERENCES.

22 (E) MENTAL HEALTH CARE INFORMATION.--

23 (1) UNLESS SPECIFICALLY PROVIDED OTHERWISE IN A MENTAL
24 HEALTH CARE POWER OF ATTORNEY, A MENTAL HEALTH CARE AGENT
25 SHALL HAVE THE SAME RIGHTS AND LIMITATIONS AS THE PRINCIPAL
26 TO REQUEST, EXAMINE, COPY AND CONSENT OR REFUSE TO CONSENT TO
27 THE DISCLOSURE OF MENTAL HEALTH CARE INFORMATION.

28 (2) DISCLOSURE OF MENTAL HEALTH CARE INFORMATION TO A
29 MENTAL HEALTH CARE AGENT SHALL NOT BE CONSTRUED TO CONSTITUTE
30 A WAIVER OF ANY EVIDENTIARY PRIVILEGE OR RIGHT TO ASSERT

1 CONFIDENTIALITY.

2 (3) A MENTAL HEALTH CARE PROVIDER THAT DISCLOSES MENTAL
3 HEALTH CARE INFORMATION TO A MENTAL HEALTH CARE AGENT IN GOOD
4 FAITH SHALL NOT BE LIABLE FOR THE DISCLOSURE.

5 (4) A MENTAL HEALTH CARE AGENT MAY NOT DISCLOSE MENTAL
6 HEALTH CARE INFORMATION REGARDING THE PRINCIPAL EXCEPT AS IS
7 REASONABLY NECESSARY TO PERFORM THE AGENT'S OBLIGATIONS TO
8 THE PRINCIPAL OR AS OTHERWISE REQUIRED BY LAW.

9 (F) LIABILITY OF AGENT.--A MENTAL HEALTH CARE AGENT SHALL
10 NOT BE PERSONALLY LIABLE FOR THE COSTS OF CARE AND TREATMENT OF
11 THE PRINCIPAL.

12 § 5837. REMOVAL OF AGENT.

13 (A) GROUNDS FOR REMOVAL.--A HEALTH CARE AGENT CAN BE REMOVED
14 FOR ANY OF THE FOLLOWING REASONS:

15 (1) DEATH OR INCAPACITY.

16 (2) NONCOMPLIANCE WITH A POWER OF ATTORNEY.

17 (3) PHYSICAL ASSAULT OR THREATS OF HARM.

18 (4) COERCION.

19 (5) VOLUNTARY WITHDRAWAL BY THE AGENT.

20 (6) DIVORCE.

21 (B) NOTICE OF VOLUNTARY WITHDRAWAL.--

22 (1) A MENTAL HEALTH CARE AGENT WHO VOLUNTARILY WITHDRAWS
23 SHALL INFORM THE PRINCIPAL.

24 (2) IF THE POWER OF ATTORNEY IS IN EFFECT, THE AGENT
25 SHALL NOTIFY PROVIDERS OF MENTAL HEALTH TREATMENT.

26 (C) CHALLENGES.--THIRD PARTIES MAY CHALLENGE THE AUTHORITY
27 OF A MENTAL HEALTH AGENT IN THE ORPHAN'S COURT DIVISION OF THE
28 COURT OF COMMON PLEAS.

29 (D) EFFECT OF REMOVAL.--IF A POWER OF ATTORNEY PROVIDES FOR
30 A SUBSTITUTE AGENT, THEN THE SUBSTITUTE AGENT SHALL ASSUME

1 RESPONSIBILITY WHEN THE AGENT IS REMOVED. IF THE POWER OF
2 ATTORNEY DOES NOT PROVIDE FOR A SUBSTITUTE, THEN A MENTAL HEALTH
3 CARE PROVIDER SHALL FOLLOW ANY INSTRUCTIONS IN THE POWER OF
4 ATTORNEY.

5 § 5838. EFFECT OF DIVORCE.

6 IF THE SPOUSE OF A PRINCIPAL IS DESIGNATED AS THE PRINCIPAL'S
7 MENTAL HEALTH CARE AGENT AND THEREAFTER EITHER SPOUSE FILES AN
8 ACTION IN DIVORCE, THE DESIGNATION OF THE SPOUSE AS MENTAL
9 HEALTH CARE AGENT SHALL BE REVOKED AS OF THE TIME THE ACTION IS
10 FILED UNLESS IT CLEARLY APPEARS FROM THE MENTAL HEALTH CARE
11 POWER OF ATTORNEY THAT THE DESIGNATION WAS INTENDED TO CONTINUE
12 TO BE EFFECTIVE NOTWITHSTANDING THE FILING OF AN ACTION IN
13 DIVORCE BY EITHER SPOUSE.

14 § 5839. REVOCATION.

15 (A) WHEN MENTAL HEALTH CARE POWER OF ATTORNEY MAY BE
16 REVOKED.--AN INDIVIDUAL SHALL SPECIFY IN THE MENTAL HEALTH CARE
17 POWER OF ATTORNEY WHETHER IT MAY BE REVOKED BY THE PRINCIPAL:

18 (1) AT ANY TIME AND IN ANY MANNER ONLY IF THE PRINCIPAL
19 HAS NOT BEEN FOUND TO BE INCAPABLE OF MAKING MENTAL HEALTH
20 TREATMENT DECISIONS; OR

21 (2) AT THE TIME DESIGNATED FOR TERMINATION.

22 (B) EFFECT OF REVOCATION.--A REVOCATION SHALL BE EFFECTIVE
23 UPON COMMUNICATION TO THE ATTENDING PHYSICIAN OR OTHER MENTAL
24 HEALTH CARE PROVIDER BY THE PRINCIPAL OR A WITNESS TO THE
25 REVOCATION OF THE INTENT TO REVOKE.

26 (C) MENTAL HEALTH RECORD.--THE ATTENDING PHYSICIAN OR OTHER
27 MENTAL HEALTH CARE PROVIDER SHALL MAKE THE REVOCATION PART OF
28 THE MENTAL HEALTH RECORD OF THE DECLARANT.

29 (D) RELIANCE ON MENTAL HEALTH CARE POWER OF ATTORNEY.--A
30 PHYSICIAN OR OTHER MENTAL HEALTH CARE PROVIDER MAY RELY ON THE

1 EFFECTIVENESS OF A MENTAL HEALTH CARE POWER OF ATTORNEY UNLESS
2 NOTIFIED OF ITS REVOCATION.

3 (E) SUBSEQUENT ACTION BY AGENT.--A MENTAL HEALTH CARE AGENT
4 WHO HAS NOTICE OF THE REVOCATION OF A MENTAL HEALTH CARE POWER
5 OF ATTORNEY MAY NOT MAKE OR ATTEMPT TO MAKE MENTAL HEALTH CARE
6 DECISIONS FOR THE PRINCIPAL.

7 § 5840. AMENDMENT.

8 WHILE HAVING THE CAPACITY TO MAKE MENTAL HEALTH DECISIONS, A
9 PRINCIPAL MAY AMEND A MENTAL HEALTH CARE POWER OF ATTORNEY BY A
10 WRITING EXECUTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION
11 5832 (RELATING TO EXECUTION).

12 § 5841. RELATION OF MENTAL HEALTH CARE AGENT TO COURT-APPOINTED
13 GUARDIAN AND OTHER AGENTS.

14 (A) PROCEDURE.--

15 (1) UPON RECEIPT OF NOTICE OF A GUARDIANSHIP
16 PROCEEDING, A PROVIDER SHALL NOTIFY THE COURT, AND THE AGENT
17 AT THE GUARDIANSHIP PROCEEDING, OF THE EXISTENCE OF A MENTAL
18 HEALTH ADVANCE DIRECTIVE.

19 (2) UPON RECEIPT OF A NOTICE OF GUARDIANSHIP PROCEEDING,
20 THE AGENT SHALL INFORM THE COURT OF THE CONTENTS OF THE
21 MENTAL HEALTH ADVANCE DIRECTIVE.

22 (B) ACCOUNTABILITY OF MENTAL HEALTH CARE AGENT.--

23 (1) IF A PRINCIPAL WHO HAS EXECUTED A MENTAL HEALTH CARE
24 POWER OF ATTORNEY IS LATER ADJUDICATED AN INCAPACITATED
25 PERSON, THE POWER OF ATTORNEY SHALL REMAIN IN EFFECT.

26 (2) THE COURT SHALL GIVE PREFERENCE TO ALLOWING THE
27 AGENT TO CONTINUE MAKING MENTAL HEALTH CARE DECISIONS AS
28 PROVIDED IN THE MENTAL HEALTH ADVANCE DIRECTIVE UNLESS THE
29 PRINCIPAL SPECIFIED THAT THE GUARDIAN HAS THE POWER TO
30 TERMINATE, REVOKE, OR SUSPEND THE POWER OF ATTORNEY IN THE

ADVANCE DIRECTIVE.

(3) IF, AFTER THOROUGH EXAMINATION, THE COURT GRANTS THE POWERS CONTAINED IN THE MENTAL HEALTH ADVANCE DIRECTIVE TO THE GUARDIAN, THE GUARDIAN SHALL BE BOUND BY THE SAME OBLIGATIONS AS THE AGENT WOULD HAVE BEEN.

(C) NOMINATION OF GUARDIAN OF PERSON.--IN A MENTAL HEALTH CARE POWER OF ATTORNEY, A PRINCIPAL MAY NOMINATE THE GUARDIAN OF THE PERSON FOR THE PRINCIPAL FOR CONSIDERATION BY THE COURT IF INCAPACITY PROCEEDINGS FOR THE PRINCIPAL'S PERSON ARE THEREAFTER COMMENCED. IF THE COURT DETERMINES THAT THE APPOINTMENT OF A GUARDIAN IS NECESSARY, THE COURT SHALL APPOINT IN ACCORDANCE WITH THE PRINCIPAL'S MOST RECENT NOMINATION EXCEPT FOR GOOD CAUSE OR DISQUALIFICATION.

§ 5842. DUTIES OF ATTENDING PHYSICIAN AND MENTAL HEALTH CARE PROVIDER.

(A) COMPLIANCE WITH DECISIONS OF MENTAL HEALTH CARE AGENT.--SUBJECT TO ANY LIMITATION SPECIFIED IN A MENTAL HEALTH CARE POWER OF ATTORNEY, AN ATTENDING PHYSICIAN OR MENTAL HEALTH CARE PROVIDER SHALL COMPLY WITH A MENTAL HEALTH CARE DECISION MADE BY A MENTAL HEALTH CARE AGENT TO THE SAME EXTENT AS IF THE DECISION HAD BEEN MADE BY THE PRINCIPAL.

(B) MENTAL HEALTH RECORD.--

(1) AN ATTENDING PHYSICIAN OR MENTAL HEALTH CARE PROVIDER WHO IS GIVEN A MENTAL HEALTH CARE POWER OF ATTORNEY SHALL ARRANGE FOR THE MENTAL HEALTH CARE POWER OF ATTORNEY OR A COPY TO BE PLACED IN THE MENTAL HEALTH RECORD OF THE PRINCIPAL.

(2) AN ATTENDING PHYSICIAN OR MENTAL HEALTH CARE PROVIDER TO WHOM AN AMENDMENT OR REVOCATION OF A MENTAL HEALTH CARE POWER OF ATTORNEY IS COMMUNICATED SHALL PROMPTLY

1 ENTER THE INFORMATION IN THE MENTAL HEALTH RECORD OF THE
2 PRINCIPAL AND MAINTAIN A COPY IF ONE IS FURNISHED.

3 (C) RECORD OF DETERMINATION.--AN ATTENDING PHYSICIAN WHO
4 DETERMINES THAT A PRINCIPAL IS UNABLE TO MAKE OR HAS REGAINED
5 THE CAPACITY TO MAKE MENTAL HEALTH TREATMENT DECISIONS OR MAKES
6 A DETERMINATION THAT AFFECTS THE AUTHORITY OF A MENTAL HEALTH
7 CARE AGENT SHALL ENTER THE DETERMINATION IN THE MENTAL HEALTH
8 RECORD OF THE PRINCIPAL AND, IF POSSIBLE, PROMPTLY INFORM THE
9 PRINCIPAL AND ANY MENTAL HEALTH CARE AGENT OF THE DETERMINATION.

10 § 5843. CONSTRUCTION.

11 (A) GENERAL RULE.--NOTHING IN THIS SUBCHAPTER SHALL BE
12 CONSTRUED TO:

13 (1) AFFECT THE REQUIREMENTS OF OTHER LAWS OF THIS
14 COMMONWEALTH REGARDING CONSENT TO OBSERVATION, DIAGNOSIS,
15 TREATMENT OR HOSPITALIZATION FOR A MENTAL ILLNESS.

16 (2) AUTHORIZE A MENTAL HEALTH CARE AGENT TO CONSENT TO
17 ANY MENTAL HEALTH CARE PROHIBITED BY THE LAWS OF THIS
18 COMMONWEALTH.

19 (3) AFFECT THE LAWS OF THIS COMMONWEALTH REGARDING ANY
20 OF THE FOLLOWING:

21 (I) THE STANDARD OF CARE OF A MENTAL HEALTH CARE
22 PROVIDER REQUIRED IN THE ADMINISTRATION OF MENTAL HEALTH
23 CARE OR THE CLINICAL DECISION-MAKING AUTHORITY OF THE
24 MENTAL HEALTH CARE PROVIDER.

25 (II) WHEN CONSENT IS REQUIRED FOR MENTAL HEALTH
26 CARE.

27 (III) INFORMED CONSENT FOR MENTAL HEALTH CARE.

28 (4) AFFECT THE ABILITY TO ADMIT A PERSON TO A MENTAL
29 HEALTH FACILITY UNDER THE VOLUNTARY AND INVOLUNTARY
30 COMMITMENT PROVISIONS OF THE ACT OF JULY 9, 1976 (P.L.817,

1 NO.143), KNOWN AS THE MENTAL HEALTH PROCEDURES ACT.

2 (B) DISCLOSURE.--

3 (1) THE DISCLOSURE REQUIREMENTS OF SECTION 5836(E)
4 (RELATING TO AUTHORITY OF MENTAL HEALTH CARE AGENT) SHALL
5 SUPERSEDE ANY PROVISION IN ANY OTHER STATE STATUTE OR
6 REGULATION THAT REQUIRES A PRINCIPAL TO CONSENT TO DISCLOSURE
7 OR WHICH OTHERWISE CONFLICTS WITH SECTION 5836(E), INCLUDING,
8 BUT NOT LIMITED TO, THE FOLLOWING:

9 (I) THE ACT OF APRIL 14, 1972 (P.L.221, NO.63),
10 KNOWN AS THE PENNSYLVANIA DRUG AND ALCOHOL ABUSE CONTROL
11 ACT.

12 (II) SECTION 111 OF THE ACT OF JULY 9, 1976
13 (P.L.817, NO.143), KNOWN AS THE MENTAL HEALTH PROCEDURES
14 ACT.

15 (III) THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
16 KNOWN AS THE OSTEOPATHIC MEDICAL PRACTICE ACT.

17 (IV) SECTION 41 OF THE ACT OF DECEMBER 20, 1985
18 (P.L.457, NO.112), KNOWN AS THE MEDICAL PRACTICE ACT OF
19 1985.

20 (V) THE ACT OF NOVEMBER 29, 1990 (P.L.585, NO.148),
21 KNOWN AS THE CONFIDENTIALITY OF HIV-RELATED INFORMATION
22 ACT.

23 (2) THE DISCLOSURE REQUIREMENTS UNDER SECTION 5836(E)
24 SHALL NOT APPLY TO THE EXTENT THAT THE DISCLOSURE WOULD BE
25 PROHIBITED BY FEDERAL LAW AND IMPLEMENTING REGULATIONS.

26 (C) NOTICE AND ACKNOWLEDGMENT REQUIREMENTS.--THE NOTICE AND
27 ACKNOWLEDGMENT REQUIREMENTS OF SECTION 5601(C) AND (D) (RELATING
28 TO GENERAL PROVISIONS) SHALL NOT APPLY TO A POWER OF ATTORNEY
29 THAT PROVIDES EXCLUSIVELY FOR MENTAL HEALTH CARE DECISION
30 MAKING.

1 § 5844. CONFLICTING MENTAL HEALTH CARE POWERS OF ATTORNEY.

2 IF A PROVISION OF A MENTAL HEALTH CARE POWER OF ATTORNEY
3 CONFLICTS WITH ANOTHER PROVISION OF A MENTAL HEALTH CARE POWER
4 OF ATTORNEY OR WITH A PROVISION OF A DECLARATION, THE PROVISION
5 OF THE INSTRUMENT LATEST IN DATE OF EXECUTION SHALL PREVAIL TO
6 THE EXTENT OF THE CONFLICT.

7 § 5845. VALIDITY.

8 THIS SUBCHAPTER SHALL NOT BE CONSTRUED TO LIMIT THE VALIDITY
9 OF A MENTAL HEALTH CARE POWER OF ATTORNEY EXECUTED PRIOR TO THE
10 EFFECTIVE DATE OF THIS SUBCHAPTER. A MENTAL HEALTH CARE POWER OF
11 ATTORNEY EXECUTED IN ANOTHER STATE OR JURISDICTION AND IN
12 CONFORMITY WITH THE LAWS OF THAT STATE OR JURISDICTION SHALL BE
13 CONSIDERED VALID IN THIS COMMONWEALTH, EXCEPT TO THE EXTENT THAT
14 THE MENTAL HEALTH CARE POWER OF ATTORNEY EXECUTED IN ANOTHER
15 STATE OR JURISDICTION WOULD ALLOW A MENTAL HEALTH CARE AGENT TO
16 MAKE A MENTAL HEALTH CARE DECISION INCONSISTENT WITH THE LAWS OF
17 THIS COMMONWEALTH.

18 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.