
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2036 Session of
2003

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DeLUCA, JOSEPHS, HORSEY, SAINATO, WILT, WASHINGTON, BISHOP
AND GERGELY, OCTOBER 8, 2003

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, NOVEMBER 15, 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 Declarations

13 C. Mental Health Powers of Attorney

1 SUBCHAPTER A

2 GENERAL PROVISIONS

3 Sec.

4 5801. Applicability.

5 5802. Definitions.

6 5803. Legislative findings and intent.

7 5804. Compliance.

8 5805. Liability.

9 5806. Penalties.

10 5807. Rights and responsibilities.

11 5808. Combining mental health care instruments.

12 § 5801. Applicability.

13 (a) General rule.--This chapter applies to mental health
14 declarations and mental health powers of attorney.

15 (b) Preservation of existing rights.--The provisions of this
16 chapter shall not be construed to impair or supersede any
17 existing rights or responsibilities not addressed in this
18 chapter.

19 § 5802. Definitions.

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

23 "Attending physician." A physician who has primary
24 responsibility for the treatment and care of the declarant or
25 principal.

26 "Declarant." An individual who makes a declaration in
27 accordance with this chapter.

28 "Declaration." A writing made in accordance with this
29 chapter that expresses a declarant's wishes and instructions for
30 mental health care and mental health care directions and which

1 may contain other specific directions.

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

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

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

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

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

18 "Mental health treatment professional." A licensed physician
19 who has successfully completed a residency program in psychiatry
20 or a person trained and licensed in social work, psychology or
21 nursing who has a graduate degree and clinical experience in
22 mental health.

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

25 § 5803. Legislative findings and intent.

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

30 (b) Presumption not created.--This chapter shall not be

1 construed to create any presumption regarding the intent of an
2 individual who has not executed a declaration or mental health
3 care power of attorney to consent to the use or withholding of
4 treatment.

5 (c) Findings in general.--The General Assembly finds that
6 all capable adults have a qualified right to control decisions
7 relating to their own mental health care.

8 § 5804. Compliance.

9 (a) Duty to comply.--

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

13 (2) If an attending physician or other mental health
14 care provider cannot in good conscience comply with a
15 declaration or mental health care decision of a mental health
16 care agent because the instructions are contrary to accepted
17 clinical practice and medical standards or because treatment
18 is unavailable or if the policies of a mental health care
19 provider preclude compliance with a declaration or mental
20 health care decision of a mental health care agent,
21 immediately upon receipt of the declaration or power of
22 attorney, and as soon as any possibility of noncompliance
23 becomes apparent, the attending physician or mental health
24 care provider shall so inform the following:

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

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

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

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

2 (3) The physician or mental health care provider shall
3 document the reasons for noncompliance.

4 (b) Transfer.--An attending physician or mental health care
5 provider under subsection (a)(2) shall make every reasonable
6 effort to assist in the transfer of the declarant or principal
7 to another physician or mental health care provider who will
8 comply with the declaration or mental health care decision of
9 the mental health care agent. While the transfer is pending, the
10 patient shall be treated consistent with the ~~advance directive~~ <—
11 DECLARATION OR MENTAL HEALTH CARE DECISION OF THE MENTAL HEALTH <—
12 AGENT. If reasonable efforts to transfer fail, the patient may
13 be discharged.

14 § 5805. Liability.

15 (a) General rule.--A person who is a physician, another
16 mental health care provider or another person who acts in good
17 faith and consistent with this chapter may not be subject to
18 criminal or civil liability, discipline for unprofessional
19 conduct or administrative sanctions and may not be found to have
20 committed an act of unprofessional conduct by any professional
21 board or administrative body with such authority as a result of
22 any of the following:

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

28 (2) Refusing to comply with a direction or decision of
29 an individual based on a good faith belief that the
30 individual lacks authority to act as a principal's mental

1 health care agent.

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

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

8 (5) Refusing to comply with the direction or decision of
9 an individual due to conflicts with a provider's contractual,
10 network or payment policy restrictions.

11 (6) Refusing to comply with a ~~mental health directive~~ <—
12 DECLARATION OR MENTAL HEALTH POWER OF ATTORNEY which violates <—
13 accepted clinical standards or medical standards of care.

14 (7) Making a determination that the patient lacks
15 capacity to make mental health decisions that causes a ~~mental~~ <—
16 ~~health advance directive~~ DECLARATION OR A MENTAL HEALTH POWER <—
17 OF ATTORNEY to become effective.

18 (8) Failing to determine that a patient lacks capacity
19 to make mental health decisions for the purposes of this ~~act~~ <—
20 CHAPTER. <—

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

25 (c) Good faith of mental health care agent.--A mental health
26 care agent who acts according to the terms of a mental health
27 power of attorney may not be subject to civil or criminal
28 liability for acting in good faith for a principal or failing in
29 good faith to act for a principal.

30 § 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 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 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 mental health 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 mental health power of attorney shall have the following rights and responsibilities:

(1) For the purposes of this ~~act~~ CHAPTER, persons are presumed capable of making mental health decisions, including the execution of a mental health declaration or power of attorney, unless they are adjudicated incapacitated, involuntarily committed or found to be incapable of making mental health decisions after examination by a psychiatrist and one of the following: another psychiatrist, psychologist,

<—

1 family physician, attending physician or mental health
2 treatment professional. Whenever possible, at least one of
3 the decision makers shall be a treating professional of the
4 declarant or principal.

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

8 (3) Persons shall execute or amend their declarations or
9 mental health powers of attorney every two years, however if
10 a person is incapable of making mental health care decisions
11 at the time this document would expire, the document shall
12 remain in effect and be reviewed at the time when the person
13 regains capacity.

14 (4) Persons shall give notice of amendment and
15 revocation to providers, agents and guardians, if any.

16 (b) Providers.--Mental health treatment providers shall have
17 the following rights and responsibilities:

18 (1) Inquire as to the existence of declarations or
19 powers of attorney for persons in their care.

20 (2) Inform persons who are being discharged from
21 treatment about the availability of mental health
22 declarations and powers of attorney as part of discharge
23 planning.

24 (3) Not require declarations or powers of attorney as
25 conditions of treatment. Mental health treatment providers
26 may not choose whether to accept a person for treatment based
27 solely on the existence or absence of a mental health
28 declaration or power of attorney.

29 § 5808. Combining mental health instruments.

30 (a) General rule.--A declaration and mental health power of

1 attorney may be combined into one mental health document.

2 (b) Form.--A combined declaration and mental health power of
3 attorney may be in the following form or any other written form
4 which contains the information required under Subchapters B
5 (relating to mental health ~~care~~ declarations) and C (relating to <—
6 mental health ~~care~~ powers of attorney): <—

7 Combined Mental Health Care Declaration
8 and Power of Attorney Form

9 Part I. Introduction.

10 I, , having capacity to make mental health
11 decisions, willfully and voluntarily make this declaration
12 and power of attorney regarding my mental health care.

13 I understand that mental health care includes any care,
14 treatment, service or procedure to maintain, diagnose, treat
15 or provide for mental health, including any medication
16 program and therapeutic treatment. Electroconvulsive therapy
17 may be administered only if I have specifically consented to
18 it in this document. I will be the subject of laboratory
19 trials or research only if specifically provided for in this
20 document. Mental health care does not include psychosurgery
21 or termination of parental rights.

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

28 Part II. Mental Health Declaration.

29 A. When this declaration becomes effective.

30 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.

() I consent to the medications that my treating physician recommends with the following exception, preference or limitation:

(List medication and reason for exception, preference or limitation)

The exception, preference 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.

1 () I have designated an agent under the power of attorney
2 portion of this document to make decisions related to
3 medication.

4 3. Preferences regarding electroconvulsive therapy
5 (ECT).

6 () I consent to the administration of electroconvulsive
7 therapy.

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

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

13 4. Preferences for experimental studies or drug trials.

14 () I consent to participation in experimental studies if my
15 treating physician believes that the potential benefits to me
16 outweigh 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
19 experimental studies.

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

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

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

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

29 5. Additional instructions or information.

30 Examples of other instructions or information that may be

1 included:

2 Activities that help or worsen symptoms.

3 Type of intervention preferred in the event of a
4 crisis.

5 Mental and physical health history.

6 Dietary requirements.

7 Religious preferences.

8 Temporary custody of children.

9 Family notification.

10 Limitations on the release or disclosure of
11 mental health records.

12 Other matters of importance.

13 C. Revocation.

14 This declaration may be revoked in whole or in part at any
15 time, either orally or in writing, as long as I have not been
16 found to be incapable of making mental health decisions.

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

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

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

27 (3) two years after the date this document was executed.

28 D. Termination.

29 I understand that this declaration will automatically
30 terminate two years from the date of execution, unless I am

1 deemed incapable of making mental health care decisions at
2 the time that this declaration would expire.

3 (Specify date)

4 E. Preference as to a court-appointed guardian.

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

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

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

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

19 Part III. Mental Health Power of Attorney.

20 I, , having the capacity to make mental health
21 decisions, authorize my designated health care agent to make
22 certain decisions on my behalf regarding my mental health
23 care. If I have not expressed a choice in this document or in
24 the accompanying declaration, I authorize my agent to make
25 the decision that my agent determines is the decision I would
26 make if I were competent to do so.

27 A. Designation of agent.

28 I hereby designate and appoint the following person as my
29 agent to make mental health care decisions for me as
30 authorized in this document. This authorization applies only

1 to mental health decisions that are not addressed in the
2 accompanying signed declaration.

3 (Insert name of designated person)

4 Signed:

5 (My name, address, telephone number)

6 (Witnesses signatures)

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

8 Agent's acceptance:

9 I hereby accept designation as mental health care agent for

10 (Insert name of declarant)

11 Agent's signature:

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

13 B. Designation of alternative agent.

14 In the event that my first agent is unavailable or unable to

15 serve as my mental health care agent, I hereby designate and

16 appoint the following individual as my alternative mental

17 health care agent to make mental health care decisions for me

18 as authorized in this document:

19 (Insert name of designated person)

20 Signed:

21 (My name, address, telephone number)

22 (Witnesses signatures)

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

24 Alternative agent's acceptance:

25 I hereby accept designation as alternative mental health care

26 agent for (Insert name of declarant)

27 Alternative agent's signature:

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

29 C. When this power of attorney become effective.

30 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) Preferences regarding medications for psychiatric treatment.

() 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.

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

(2) Preferences regarding electroconvulsive therapy (ECT).

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

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

(3) Preferences for experimental studies or drug trials.

() 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 experimental studies.

() 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.

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

E. Revocation.

This power of attorney 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 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) two years from the date this document was executed.

I understand that this power of attorney 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 power of attorney would expire.

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 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 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

1 hearing; independent evaluation) or severely mentally disabled
2 pursuant to Article III of the act of July 9, 1976 (P.L.817,
3 No.143), known as the Mental Health Procedures Act, may make a
4 declaration governing the initiation, continuation, withholding
5 or withdrawal of mental health treatment.

6 (b) Requirements.--A declaration must be:

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

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

12 (c) Witnesses.--

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

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

20 § 5823. Form.

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

28 Mental Health Declaration.

29 I, , having the capacity to make mental
30 health decisions, willfully and voluntarily make this

1 declaration regarding my mental health care.

2 I understand that mental health care includes any care,
3 treatment, service or procedure to maintain, diagnose, treat
4 or provide for mental health, including any medication
5 program and therapeutic treatment. Electroconvulsive therapy
6 may be administered only if I have specifically consented to
7 it in this document. I will be the subject of laboratory
8 trials or research, only if specifically provided for in this
9 document. Mental health care does not include psychosurgery
10 or termination of parental rights.

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

17 A. When this declaration becomes effective.

18 This declaration becomes effective at the following
19 designated time:

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

22 () When the following condition is met:

23 (List condition)

24 B. Treatment preferences.

25 1. Choice of treatment facility.

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

29 (Insert name and address of facility)

30 () In the event that I require commitment to a psychiatric

1 treatment facility, I do not wish to be committed to the
2 following facility:

3 (Insert name and address of facility)

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

6 2. Preferences regarding medications for psychiatric
7 treatment.

8 () I consent to the medications that my treating physician
9 recommends with the following exception, preference or
10 limitation:

11 (List medication and reason for exception, preference or
12 limitation)

13 This exception, preference or limitation applies to generic,
14 brand name and trade name equivalents. I understand that
15 dosage instructions are not binding on my physician.

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

17 3. Preferences regarding electroconvulsive therapy
18 (ECT).

19 () I consent to the administration of electroconvulsive
20 therapy.

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

23 4. Preferences for experimental studies or drug trials.

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

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

29 () I consent to participation in drug trials if my treating
30 physician believes that the potential benefits to me outweigh

1 the possible risks to me.

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

3 5. Additional instructions or information.

4 Examples of other instructions or information that may be
5 included:

6 Activities that help or worsen symptoms.

7 Type of intervention preferred in the event of a
8 crisis.

9 Mental and physical health history.

10 Dietary requirements.

11 Religious preferences.

12 Temporary custody of children.

13 Family notification.

14 Limitations on the release or disclosure of mental
15 health records.

16 Other matters of importance.

17 C. Revocation.

18 This declaration may be revoked in whole or in part at any
19 time, either orally or in writing, as long as I have not been
20 found to be incapable of making mental health decisions.

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

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

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

30 (3) two years after the date this document was executed.

1 D. Termination.

2 I understand that this declaration will automatically
3 terminate two years from the date of execution unless I am
4 deemed incapable of making mental health care decisions at
5 the time that the declaration would expire.

6 E. Preference as to a court-appointed guardian.

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

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

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

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

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

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

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

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

29 Signature of person signing on my behalf:

30 (Name, address and telephone number)

1 § 5824. Operation.

2 (a) When operative.--A declaration becomes operative when:

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

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

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

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

14 (d) Mental health record.--A physician or other mental
15 health care provider to whom a copy of a declaration is
16 furnished shall make it a part of the mental health record of
17 the declarant, for at least two years from the date of
18 execution, and if unwilling to comply with the declaration,
19 promptly so advise those listed in section 5804(a)(2).

20 (e) Duration.--A declaration shall be valid until revoked by
21 the declarant or until two years from the date of execution. If
22 a declaration for mental health treatment has been invoked and
23 is in effect at the specified expiration date after its
24 execution, the declaration shall remain effective until the
25 principal is no longer incapable.

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

30 § 5825. Revocation.

1 (a) When declaration may be revoked.--A declaration may be
2 revoked by the declarant at any time, either orally or in
3 writing in whole or in part unless the individual has been found
4 to be incapable of making mental health decisions or the
5 individual has been involuntarily committed.

6 (b) Capacity to revoke.--Subsection (a) notwithstanding,
7 during a period of involuntary commitment pursuant to Article
8 III of the act of July 9, 1976 (P.L.817, No.143), known as the
9 Mental Health Procedures Act, a declarant may revoke the
10 declaration only if found to be capable of making mental health
11 decisions after examination by a psychiatrist and one of the
12 following: another psychiatrist, a psychologist, family
13 physician, attending physician or mental treatment professional.
14 Whenever possible, at least one of the decision makers shall be
15 a treating professional of the declarant or principal.

16 (c) Effect of revocation.--A revocation of a declaration
17 shall be effective upon communication to the attending physician
18 or other mental health care provider by the declarant or a
19 witness to the revocation of the intent to revoke.

20 (d) Mental health record.--An attending physician or other
21 mental health care provider shall make revocation, a finding of
22 capacity or a declaration part of the mental health record of
23 the declarant.

24 § 5826. Amendment.

25 (a) Capacity to amend.--While having the capacity to make
26 mental health decisions, a declarant may amend a declaration by
27 a writing executed in accordance with the provisions of section
28 5822 (relating to execution).

29 (b) Determination of capacity.--During the period of
30 involuntary treatment pursuant to Article III of the act of July

1 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures
2 Act, a declarant may amend the declaration if the individual is
3 found to be capable of making mental health decisions after
4 examination by a psychiatrist and one of the following: another
5 psychiatrist, a psychologist, family physician, attending
6 physician or mental health treatment professional. Whenever
7 possible, at least one of the decision makers shall be a
8 treating professional of the declarant or principal.

9 SUBCHAPTER C

10 MENTAL HEALTH POWERS OF ATTORNEY

11 Sec.

12 5831. Short title of subchapter.

13 5832. Execution.

14 5833. Form.

15 5834. Operation.

16 5835. Appointment of mental health care agents.

17 5836. Authority of mental health care agent.

18 5837. Removal of agent.

19 5838. Effect of divorce.

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22 5841. Relation of mental health care agent to court-appointed
23 guardian and other agents.

24 5842. Duties of attending physician and mental health care
25 provider.

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27 5844. ~~Conflicting mental health care powers of attorney~~

<—

28 PROVISIONS.

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29 5845. Validity.

30 § 5831. Short title of subchapter.

1 This subchapter shall be known and may be cited as the Mental
2 Health Care Agents Act.

3 § 5832. Execution.

4 (a) Who may make.--An individual who is at least 18 years of
5 age or an emancipated minor and who has not been deemed
6 incapacitated pursuant to section 5511 (relating to petition and
7 hearing; independent evaluation) or found to be severely
8 mentally disabled pursuant to Article III of the act of July 9,
9 1976 (P.L.817, No.143), known as the Mental Health Procedures
10 Act, may make a mental health power of attorney governing the
11 initiation, continuation, withholding or withdrawal of mental
12 health treatment.

13 (b) Requirements.--A mental health power of attorney must
14 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 mental health power of
22 attorney on behalf of and at the direction of a principal may
23 not witness the mental health power of attorney.

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

29 § 5833. Form.

30 (a) Requirements.--A mental health power of attorney must do

1 the following:

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

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

7 (b) Optional provisions.--A mental health power of attorney
8 may:

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

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

14 (3) Nominate a guardian of the person of the principal
15 as provided in section 5511 (relating to appointment of
16 guardian).

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

21 (c) Written form.--A mental health power of attorney may be
22 in the following form or any other written form identifying the
23 principal, appointing a mental health care agent and declaring
24 that the principal authorizes the mental health care agent to
25 make mental health care decisions on behalf of the principal.

26 Mental Health Power of Attorney

27 I, , having the capacity to make mental
28 health decisions, authorize my designated health care agent
29 to make certain decisions on my behalf regarding my mental
30 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. Electroconvulsive therapy may be administered only if I have specifically consented to it in this document. I will be the subject of laboratory trials or research only if 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:

(My name, address, telephone number)

(Witnesses' signatures)

(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:

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 Other matters of importance.

1 E. Revocation.

2 This power of attorney may be revoked in whole or in part at
3 any time, either orally or in writing, as long as I have not
4 been found to be incapable of making mental health decisions.
5 My revocation will be effective upon communication to my
6 attending physician or other mental health care provider,
7 either by me or a witness to my revocation, of the intent to
8 revoke. If I choose to revoke a particular instruction
9 contained in this power of attorney in the manner specified,
10 I understand that the other instructions contained in this
11 power of attorney will remain effective until:

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

13 (2) I make a new mental health power of attorney; or

14 (3) two years after the date this document was executed.

15 F. Termination.

16 I understand that this power of attorney will automatically
17 terminate two years from the date of execution unless I am
18 deemed incapable of making mental health care decisions at
19 the time the power of attorney would expire.

20 G. Preference as to a court-appointed guardian.

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

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

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

1 power of attorney.

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

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

6 My signature
7 (My Name, address, telephone number)

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

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

13 Signature of person signing on my behalf:
14 Signature
15 (Name, address telephone number)

16 § 5834. Operation.

17 (a) When operative.--A mental health power of attorney shall
18 become operative when:

19 (1) A copy is provided to the attending physician.
20 (2) The conditions stated in the power of attorney are
21 met.

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

27 (c) Duration.--A mental health power of attorney shall be
28 valid until revoked by the principal or until two years after
29 the date of execution. If a mental health power of attorney for
30 mental health treatment has been invoked and is in effect at the

1 specified date of expiration after its execution, the mental
2 health power of attorney shall remain effective until the
3 principal is no longer incapable.

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

7 § 5835. Appointment of mental health care agents.

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

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

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

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

21 § 5836. Authority of mental health care agent.

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

28 (b) Powers not granted.--A mental health power of attorney
29 may not convey the power to relinquish parental rights or
30 consent to psychosurgery.

1 (c) Powers and duties only specifically granted.--Unless
2 specifically included in a mental health power of attorney, the
3 agent shall not have the power to consent to electroconvulsive
4 therapy or to experimental procedures or research.

5 (d) Mental health care decisions.--After consultation with
6 mental health care providers and after consideration of the
7 prognosis and acceptable alternatives regarding diagnosis,
8 treatments and side effects, a mental health care agent shall
9 make mental health care decisions in accordance with the mental
10 health care agent's understanding and interpretation of the
11 instructions given by the principal at a time when the principal
12 had the capacity to make and communicate mental health care
13 decisions. Instructions include a declaration made by the
14 principal and any clear written or verbal directions that cover
15 the situation presented. In the absence of instructions, the
16 mental health care agent shall make mental health care decisions
17 conforming with the mental health care agent's assessment of the
18 principal's preferences.

19 (e) Mental health care information.--

20 (1) Unless specifically provided otherwise in a mental
21 health power of attorney, a mental health care agent shall
22 have the same rights and limitations as the principal to
23 request, examine, copy and consent or refuse to consent to
24 the disclosure of mental health care information.

25 (2) Disclosure of mental health care information to a
26 mental health care agent shall not be construed to constitute
27 a waiver of any evidentiary privilege or right to assert
28 confidentiality.

29 (3) A mental health care provider that discloses mental
30 health care information to a mental health care agent in good

1 faith shall not be liable for the disclosure.

2 (4) A mental health care agent may not disclose mental
3 health care information regarding the principal except as is
4 reasonably necessary to perform the agent's obligations to
5 the principal or as otherwise required by law.

6 (f) Liability of agent.--A mental health care agent shall
7 not be personally liable for the costs of care and treatment of
8 the principal.

9 § 5837. Removal of agent.

10 (a) Grounds for removal.--A mental health care agent may be
11 removed BY THE COURT for any of the following reasons: <—

12 (1) Death or incapacity.

13 (2) Noncompliance with a mental health power of
14 attorney.

15 (3) Physical assault or threats of harm.

16 (4) Coercion.

17 (5) Voluntary withdrawal by the agent.

18 (6) Divorce.

19 (b) Notice of voluntary withdrawal.--

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

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

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

27 (d) Effect of removal.--If a mental health power of attorney
28 provides for a substitute agent, then the substitute agent shall
29 assume responsibility when the agent is removed. If the power of
30 attorney does not provide for a substitute, then a mental health

1 care provider shall follow any instructions in the power of
2 attorney.

3 § 5838. Effect of divorce.

4 If the spouse of a principal is designated as the principal's
5 mental health care agent and thereafter either spouse files an
6 action in divorce, the designation of the spouse as mental
7 health care agent shall be revoked as of the time the action is
8 filed unless it clearly appears from the mental health power of
9 attorney that the designation was intended to continue to be
10 effective notwithstanding the filing of an action in divorce by
11 either spouse.

12 § 5839. Revocation.

13 (a) When a mental health power of attorney may be revoked.--
14 A mental health power of attorney may be revoked by the
15 principal at any time, either orally or in writing in whole or
16 in part, unless the principal has been found to be incapable of
17 making mental health treatment decisions or the principal has
18 been involuntarily committed.

19 (b) Capacity to revoke.--Notwithstanding subsection (a),
20 during a period of involuntary commitment pursuant to Article
21 III of the act of July 9, 1976 (P.L.817, No.143), known as the
22 Mental Health Procedures Act, a principal may revoke the mental
23 health power of attorney only if found to be capable of making
24 mental health decisions after examination by a psychiatrist and
25 one of the following: another psychiatrist, a psychologist, a
26 family physician, an attending physician or a mental health
27 treatment professional. Whenever possible, at least one of the
28 decision makers shall be a treating professional of the
29 declarant or principal.

30 (c) Effect of revocation.--A revocation shall be effective

1 upon communication to the attending physician or other mental
2 health care provider by the principal or a witness to the
3 revocation of the intent to revoke.

4 (d) Mental health record.--The attending physician or other
5 mental health care provider shall make the revocation or a
6 finding of capacity part of the mental health record of the
7 declarant.

8 (e) Reliance on mental health power of attorney.--A
9 physician or other mental health care provider may rely on the
10 effectiveness of a mental health power of attorney unless
11 notified of its revocation.

12 (f) Subsequent action by agent.--A mental health care agent
13 who has notice of the revocation of a mental health power of
14 attorney may not make or attempt to make mental health care
15 decisions for the principal.

16 § 5840. Amendment.

17 While having the capacity to make mental health decisions, a
18 principal may amend a mental health power of attorney by a
19 writing executed in accordance with the provisions of section
20 5832 (relating to execution).

21 § 5841. Relation of mental health care agent to court-appointed
22 guardian and other agents.

23 (a) Procedure.--

24 (1) Upon receipt of notice of a guardianship
25 proceeding, a provider shall notify the court, and the agent
26 at the guardianship proceeding, of the existence of a mental
27 health advance directive.

28 (2) Upon receipt of a notice of guardianship proceeding,
29 the agent shall inform the court of the contents of the
30 mental health advance directive.

1 (b) Accountability of mental health care agent.--

2 (1) If a principal who has executed a mental health
3 power of attorney is later adjudicated an incapacitated
4 person, the mental health power of attorney shall remain in
5 effect.

6 (2) The court shall give preference to allowing the
7 agent to continue making mental health care decisions as
8 provided in the mental health advance directive unless the
9 principal specified that the guardian has the power to
10 terminate, revoke, or suspend the mental health power of
11 attorney in the advance directive.

12 (3) If, after thorough examination, the court grants the
13 powers contained in the mental health advance directive to
14 the guardian, the guardian shall be bound by the same
15 obligations as the agent would have been.

16 (c) Nomination of guardian of person.--In a mental health
17 power of attorney, a principal may nominate the guardian of the
18 person for the principal for consideration by the court if
19 incapacity proceedings for the principal's person are thereafter
20 commenced. If the court determines that the appointment of a
21 guardian is necessary, the court shall appoint in accordance
22 with the principal's most recent nomination except for good
23 cause or disqualification.

24 § 5842. Duties of attending physician and mental health care
25 provider.

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

1 made by the principal.

2 (b) Mental health record.--

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

7 (2) An attending physician or mental health care
8 provider to whom an amendment or revocation of a mental
9 health power of attorney is communicated shall promptly enter
10 the information in the mental health record of the principal
11 and maintain a copy if one is furnished.

12 (c) Record of determination.--An attending physician who
13 determines that a principal is unable to make or has regained
14 the capacity to make mental health treatment decisions or makes
15 a determination that affects the authority of a mental health
16 care agent shall enter the determination in the mental health
17 record of the principal and, if possible, promptly inform the
18 principal and any mental health care agent of the determination.

19 § 5843. Construction.

20 (a) General rule.--Nothing in this subchapter shall be
21 construed to:

22 (1) Affect the requirements of other laws of this
23 Commonwealth regarding consent to observation, diagnosis,
24 treatment or hospitalization for a mental illness.

25 (2) Authorize a mental health care agent to consent to
26 any mental health care prohibited by the laws of this
27 Commonwealth.

28 (3) Affect the laws of this Commonwealth regarding any
29 of the following:

30 (i) The standard of care of a mental health care

1 provider required in the administration of mental health
2 care or the clinical decision-making authority of the
3 mental health care provider.

4 (ii) When consent is required for mental health
5 care.

6 (iii) Informed consent for mental health care.

7 (4) Affect the ability to admit a person to a mental
8 health facility under the voluntary and involuntary
9 commitment provisions of the act of July 9, 1976 (P.L.817,
10 No.143), known as the Mental Health Procedures Act.

11 (b) Disclosure.--

12 (1) The disclosure requirements of section 5836(e)
13 (relating to authority of mental health care agent) shall
14 supersede any provision in any other State statute or
15 regulation that requires a principal to consent to disclosure
16 or which otherwise conflicts with section 5836(e), including,
17 but not limited to, the following:

18 (i) The act of April 14, 1972 (P.L.221, No.63),
19 known as the Pennsylvania Drug and Alcohol Abuse Control
20 Act.

21 (ii) Section 111 of the act of July 9, 1976
22 (P.L.817, No.143), known as the Mental Health Procedures
23 Act.

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

26 (iv) Section 41 of the act of December 20, 1985
27 (P.L.457, No.112), known as the Medical Practice Act of
28 1985.

29 (v) The act of November 29, 1990 (P.L.585, No.148),
30 known as the Confidentiality of HIV-Related Information

1 Act.

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

5 (c) Notice and acknowledgment requirements.--The notice and
6 acknowledgment requirements of section 5601(c) and (d) (relating
7 to general provisions) shall not apply to a power of attorney
8 that provides exclusively for mental health care decision
9 making.

10 ~~(d) Legal remedies. Nothing in this act CHAPTER shall~~ <—
11 ~~prohibit an interested party from using the same legal remedies~~
12 ~~that are otherwise available to seek a determination from the~~
13 ~~courts including invalidation of some or all of the declaration~~
14 ~~or the mental health power of attorney, in cases of potential~~
15 ~~irreparable harm or death. The courts shall have 72 hours from~~
16 ~~the time of application for remedy in which to make this~~
17 ~~determination.~~

18 (D) LEGAL REMEDIES.--AN INTERESTED PARTY MAY FILE A PETITION <—
19 SEEKING A DETERMINATION THAT FOLLOWING THE DIRECTIONS IN THE
20 DECLARATION OR THE MENTAL HEALTH POWER OF ATTORNEY, MAY CAUSE
21 POTENTIAL IRREPARABLE HARM OR DEATH. IN THAT EVENT, THE COURT
22 MAY INVALIDATE SOME OR ALL OF THE PROVISIONS AND ISSUE ORDERS
23 APPROPRIATE TO THE CIRCUMSTANCES AUTHORIZING TREATMENT. THE
24 COURTS SHALL ISSUE AN ORDER WITHIN 72 HOURS FROM THE FILING OF
25 THE PETITION.

26 § 5844. ~~Conflicting mental health powers of attorney~~ <—
27 PROVISIONS. <—

28 If a provision of a mental health power of attorney ~~conflicts~~ <—
29 ~~with another provision of a mental health power~~ CONFLICTS WITH: <—

30 (1) THE PROVISION OF ANOTHER MENTAL HEALTH POWER of

1 attorney or with a provision of a declaration, the provision
2 of the instrument latest in date of execution shall prevail
3 to the extent of the conflict.

4 (2) A POWER OF ATTORNEY, THE PROVISION IN THE MENTAL <—
5 HEALTH POWER OF ATTORNEY SHALL PREVAIL TO THE EXTENT OF THE
6 CONFLICT, REGARDLESS OF THE DATE OF EXECUTION.

7 § 5845. Validity.

8 This subchapter shall not be construed to limit the validity
9 of a health care power of attorney executed prior to the
10 effective date of this subchapter. A mental health 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 power of attorney executed in another state or
15 jurisdiction would allow a mental health care agent to make a
16 mental health care decision inconsistent with the laws of this
17 Commonwealth.

18 Section 2. The provisions of this act are severable. If any
19 provision of this act or its application to any person or
20 circumstance is held invalid, the invalidity shall not affect
21 other provisions or applications of this act which can be given
22 effect without the invalid provision or application.

23 Section 3. This act shall take effect in 60 days.