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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL  
No. 2036 Session of  
2003

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INTRODUCED BY KENNEY, KOTIK, PAYNE, BEBKO-JONES, BELFANTI,  
BENNINGHOFF, BUNT, CORRIGAN, COY, CURRY, DeWEESE, D. EVANS,  
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MUNDY, MYERS, NICKOL, O'NEILL, PALLONE, REICHLEY, ROSS,  
SANTONI, SATHER, SEMMEL, SOLOBAY, STURLA, J. TAYLOR, THOMAS,  
TIGUE, TRUE, VANCE, WALKO, WATSON, WEBER, YOUNGBLOOD,  
GOODMAN, GANNON, E. Z. TAYLOR, BROWNE, OLIVER, RUBLEY,  
DeLUCA, JOSEPHS, HORSEY, SAINATO, WILT, WASHINGTON, BISHOP  
AND GERGELY, OCTOBER 8, 2003

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AS AMENDED ON SECOND CONSIDERATION, IN SENATE, NOVEMBER 18, 2004

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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; FURTHER  
4 PROVIDING FOR THE PRUDENT INVESTOR RULE; AND REPEALING  
5 PROVISIONS RELATING TO THE APPLICABILITY OF REQUIREMENTS FOR  
6 CHARITABLE TRUSTS WITH CONTROLLING INTERESTS IN CERTAIN  
7 CORPORATIONS. <—

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

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

12 CHAPTER 58

13 MENTAL HEALTH CARE

14 Subchapter

15 A. General Provisions

1 B. Mental Health Declarations

2 C. Mental Health Powers of Attorney

3 SUBCHAPTER A

4 GENERAL PROVISIONS

5 Sec.

6 5801. Applicability.

7 5802. Definitions.

8 5803. Legislative findings and intent.

9 5804. Compliance.

10 5805. Liability.

11 5806. Penalties.

12 5807. Rights and responsibilities.

13 5808. Combining mental health care instruments.

14 § 5801. Applicability.

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

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

21 § 5802. Definitions.

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

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

28 "Declarant." An individual who makes a declaration in  
29 accordance with this chapter.

30 "Declaration." A writing made in accordance with this

1 chapter that expresses a declarant's wishes and instructions for  
2 mental health care and mental health care directions and which  
3 may contain other specific directions.

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

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

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

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

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

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

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

27 § 5803. Legislative findings and intent.

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

1 mental health care agent.

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

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

10 § 5804. Compliance.

11 (a) Duty to comply.--

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

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

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

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

30 (iii) The guardian or other legal representative of

1 the declarant, if the declarant is incompetent and a  
2 substitute is not named in the declaration.

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

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

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

16 § 5805. Liability.

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

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

30 (2) Refusing to comply with a direction or decision of

1 an individual based on a good faith belief that the  
2 individual lacks authority to act as a principal's mental  
3 health care agent.

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

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

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

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

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

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

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

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

1 good faith to act for a principal.

2 § 5806. Penalties.

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

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

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

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

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

19 (b) Removal and liability.--An agent who willfully fails to  
20 comply with a mental health power of attorney may be removed and  
21 sued for actual damages.

22 § 5807. Rights and responsibilities.

23 (a) Declarants and principals.--Persons who execute a  
24 declaration or a mental health power of attorney shall have the  
25 following rights and responsibilities:

26 (1) For the purposes of this ~~act~~ CHAPTER, persons are <—  
27 presumed capable of making mental health decisions, including  
28 the execution of a mental health declaration or power of  
29 attorney, unless they are adjudicated incapacitated,  
30 involuntarily committed or found to be incapable of making

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

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

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

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

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

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

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

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



1 § 5808. Combining mental health instruments.

2 (a) General rule.--A declaration and mental health power of  
3 attorney may be combined into one mental health document.

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

9 Combined Mental Health Care Declaration  
10 and Power of Attorney Form

11 Part I. Introduction.

12 I, \_\_\_\_\_, having capacity to make mental health  
13 decisions, willfully and voluntarily make this declaration  
14 and power of attorney regarding my mental health care.

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

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

30 Part II. Mental Health Declaration.

1 A. When this declaration becomes effective.

2 This declaration becomes effective at the following  
3 designated time:

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

6 ( ) When the following condition is met:

7 (List condition)

8 B. Treatment preferences.

9 1. Choice of treatment facility.

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

13 (Insert name and address of facility)

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

17 (Insert name and address of facility)

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

20 2. Preferences regarding medications for psychiatric  
21 treatment.

22 ( ) I consent to the medications that my treating physician  
23 recommends.

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

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

29 The exception, preference or limitation applies to generic,  
30 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.

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

3. Preferences regarding electroconvulsive therapy (ECT).

( ) I consent to the administration of electroconvulsive therapy.

( ) I do not 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 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 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 have designated an agent under the power of attorney portion of this document to make decisions related to drug trials.

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

1           5. Additional instructions or information.  
2       Examples of other instructions or information that may be  
3       included:

4           Activities that help or worsen symptoms.

5           Type of intervention preferred in the event of a  
6           crisis.

7           Mental and physical health history.

8           Dietary requirements.

9           Religious preferences.

10          Temporary custody of children.

11          Family notification.

12          Limitations on the release or disclosure of  
13          mental health records.

14          Other matters of importance.

15       C. Revocation.

16       This declaration may be revoked in whole or in part at any  
17       time, either orally or in writing, as long as I have not been  
18       found to be incapable of making mental health 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, of the intent to  
22       revoke. If I choose to revoke a particular instruction  
23       contained in this declaration in the manner specified, I  
24       understand that the other instructions contained in this  
25       declaration will remain effective until:

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

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

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

30       D. Termination.

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

5 (Specify date)

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 under 20 Pa.C.S. § 5511. I understand that the  
10 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, telephone number of the designated  
15 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 Part III. Mental Health Power of Attorney.

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

29 A. Designation of agent.

30 I hereby designate and appoint the following person as my

1 agent to make mental health care decisions for me as  
2 authorized in this document. This authorization applies only  
3 to mental health decisions that are not addressed in the  
4 accompanying signed declaration.

5 (Insert name of designated person)

6 Signed:

7 (My name, address, telephone number)

8 (Witnesses signatures)

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

10 Agent's acceptance:

11 I hereby accept designation as mental health care agent for

12 (Insert name of declarant)

13 Agent's signature:

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

15 B. Designation of alternative agent.

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

21 (Insert name of designated person)

22 Signed:

23 (My name, address, telephone number)

24 (Witnesses signatures)

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

26 Alternative agent's acceptance:

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

29 Alternative agent's signature:

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

1 C. When this power of attorney become effective.

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

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

6 ( ) When the following condition is met:

7 (List condition)

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

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

16 (1) Preferences regarding medications for psychiatric  
17 treatment.

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

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

23 (2) Preferences regarding electroconvulsive therapy  
24 (ECT).

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

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

29 (3) Preferences for experimental studies or drug trials.

30 ( ) My agent is authorized to consent to my participation in

1 experimental studies if, after consultation with my treating  
2 physician and any other individuals my agent deems  
3 appropriate, my agent believes that the potential benefits to  
4 me outweigh the possible risks to me.

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

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

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

14 E. Revocation.

15 This power of attorney may be revoked in whole or in part at  
16 any time, either orally or in writing, as long as I have not  
17 been found to be incapable of making mental health decisions.  
18 My revocation will be effective upon communication to my  
19 attending physician or other mental health care provider,  
20 either by me or a witness to my revocation, of the intent to  
21 revoke. If I choose to revoke a particular instruction  
22 contained in this power of attorney in the manner specified,  
23 I understand that the other instructions contained in this  
24 power of attorney will remain effective until:

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

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

28 (3) two years from the date this document was executed.

29 I understand that this power of attorney will automatically  
30 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

1 age or an emancipated minor and has not been deemed  
2 incapacitated pursuant to section 5511 (relating to petition and  
3 hearing; independent evaluation) or severely mentally disabled  
4 pursuant to Article III of the act of July 9, 1976 (P.L.817,  
5 No.143), known as the Mental Health Procedures Act, may make a  
6 declaration governing the initiation, continuation, withholding  
7 or withdrawal of mental health treatment.

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

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

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

14 (c) Witnesses.--

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

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

22 § 5823. Form.

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

30 Mental Health 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. 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 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:

1 (Insert name and address of facility)

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

5 (Insert name and address of facility)

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

8 2. Preferences regarding medications for psychiatric  
9 treatment.

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

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

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

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

19 3. Preferences regarding electroconvulsive therapy  
20 (ECT).

21 ( ) I consent to the administration of electroconvulsive  
22 therapy.

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

25 4. Preferences for experimental studies or drug trials.

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

29 ( ) I do not consent to participation in experimental  
30 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.

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;

1           (2) I make a new mental health care declaration; or  
2           (3) two years after the date this document was executed.

3       D. Termination.

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

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

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

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

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

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

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

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

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

28       If the principal making this declaration is unable to sign  
29       it, another individual may sign on behalf of and at the  
30       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 health record of the declarant, for at least two years from the date of execution, and if unwilling to comply with the declaration, promptly so advise those listed in section 5804(a)(2).

(e) Duration.--A declaration shall be valid until revoked by the declarant or until two years from the date of execution. 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

1 treatment.

2 § 5825. Revocation.

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

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

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

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

26 § 5826. Amendment.

27 (a) Capacity to amend.--While having the capacity to make  
28 mental health decisions, a declarant may amend a declaration by  
29 a writing executed in accordance with the provisions of section  
30 5822 (relating to execution).



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

11 SUBCHAPTER C

12 MENTAL HEALTH 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 PROVISIONS.

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1 5845. Validity.

2 § 5831. Short title of subchapter.

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

5 § 5832. Execution.

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

15 (b) Requirements.--A mental health power of attorney must  
16 be:

17 (1) Dated and signed by the principal by signature or  
18 mark or by another individual on behalf of and at the  
19 direction of the principal.

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

22 (c) Witnesses.--

23 (1) An individual who signs a mental health power of  
24 attorney on behalf of and at the direction of a principal may  
25 not witness the mental health power of attorney.

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

1 § 5833. Form.

2 (a) Requirements.--A mental health power of attorney must do  
3 the following:

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

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

9 (b) Optional provisions.--A mental health power of attorney  
10 may:

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

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

16 (3) Nominate a guardian of the person of the principal  
17 as provided in ~~section 5511~~ SUBCHAPTER C OF CHAPTER 55 <—  
18 (relating to appointment of guardian; BONDS; REMOVAL AND <—  
19 DISCHARGE).

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

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

29 Mental Health Power of Attorney

30 I, , having the capacity to make mental

1 health decisions, authorize my designated health care agent  
2 to make certain decisions on my behalf regarding my mental  
3 health care. If I have not expressed a choice in this  
4 document, I authorize my agent to make the decision that my  
5 agent determines is the decision I would make if I were  
6 competent to do so.

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

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

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

25 (Insert name of designated person)

26 Signed:

27 (My name, address, telephone number)

28 (Witnesses' signatures)

29 (Names, addresses, telephone numbers of witnesses)

30 Agent's acceptance:

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

3 Agent's signature:

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

5 B. Designation of alternative agent.

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

11 (Insert name of designated person)

12 Signed:

13 (Witnesses' signatures)

14 (Names, addresses, telephone numbers of witnesses)

15 Alternative agent's acceptance:

16 I hereby accept designation as alternative mental health care  
17 agent for

18 (Insert name of declarant)

19 Alternative agent's signature: .

20 (Insert name, address, telephone number)

21 C. When this power of attorney becomes effective.

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

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

26 ( ) When the following condition is met:

27 (List condition)

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

29 I hereby grant to my agent full power and authority to make  
30 mental health care decisions for me consistent with the

1 instructions and limitations set forth in this power of  
2 attorney. If I have not expressed a choice in this power of  
3 attorney, I authorize my agent to make the decision that my  
4 agent determines is the decision I would make if I were  
5 competent to do so.

6 1. Treatment preferences.

7 (a) Choice of treatment facility.

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

11 (Insert name and address of facility)

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

15 (Insert name and address of facility)

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

18 (b) Preferences regarding medications for psychiatric  
19 treatment.

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

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

25 (List exception or limitation)

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

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

30 (c) Preferences regarding electroconvulsive therapy

1 (ECT).

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

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

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

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

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

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

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

21 (e) Additional information and instructions.

22 Examples of other information that may be included:

23 Activities that help or worsen symptoms.

24 Type of intervention preferred in the event of a  
25 crisis.

26 Mental and physical health history.

27 Dietary requirements.

28 Religious preferences.

29 Temporary custody of children.

30 Family notification.

1 Limitations on release or disclosure of mental  
2 health records.

3 Other matters of importance.

4 E. Revocation.

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

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

16 (2) I make a new mental health power of attorney; 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 power of attorney shall  
21 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 power of attorney is held to be  
27 invalid, the invalidity does not negate other directions in the  
28 mental health power of attorney that can be effected without the  
29 invalid direction.

30 (c) Duration.--A mental health power of attorney shall be

1 valid until revoked by the principal or until two years after  
2 the date of execution. If a mental health power of attorney for  
3 mental health treatment has been invoked and is in effect at the  
4 specified date of expiration after its execution, the mental  
5 health power of attorney shall remain effective until the  
6 principal is no longer incapable.

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

10 § 5835. Appointment of mental health care agents.

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

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

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

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

24 § 5836. Authority of mental health care agent.

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

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

4 (c) Powers and duties only specifically granted.--Unless  
5 specifically included in a mental health power of attorney, the  
6 agent shall not have the power to consent to electroconvulsive  
7 therapy or to experimental procedures or 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 power of attorney, a mental health care agent shall  
25 have the same rights and limitations as the principal to  
26 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 mental health care agent may be  
14 removed BY THE COURT for any of the following reasons: <—

15 (1) Death or incapacity.

16 (2) Noncompliance with a mental health power of  
17 attorney.

18 (3) Physical assault or threats of harm.

19 (4) Coercion.

20 (5) Voluntary withdrawal by the agent.

21 (6) Divorce.

22 (b) Notice of voluntary withdrawal.--

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

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

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

30 (d) Effect of removal.--If a mental health power of attorney

1 provides for a substitute agent, then the substitute agent shall  
2 assume responsibility when the agent is removed. If the power of  
3 attorney does not provide for a substitute, then a mental health  
4 care provider shall follow any instructions in the power of  
5 attorney.

6 § 5838. Effect of divorce.

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

15 § 5839. Revocation.

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

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

1 decision makers shall be a treating professional of the  
2 declarant or principal.

3 (c) Effect of revocation.--A revocation shall be effective  
4 upon communication to the attending physician or other mental  
5 health care provider by the principal or a witness to the  
6 revocation of the intent to revoke.

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

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

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

19 § 5840. Amendment.

20 While having the capacity to make mental health decisions, a  
21 principal may amend a mental health power of attorney by a  
22 writing executed in accordance with the provisions of section  
23 5832 (relating to execution).

24 § 5841. Relation of mental health care agent to court-appointed  
25 guardian and other agents.

26 (a) Procedure.--

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

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

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

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

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

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

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

27   § 5842. Duties of attending physician and mental health care  
28            provider.

29       (a) Compliance with decisions of mental health care agent.--  
30      Subject to any limitation specified in a mental health power of

1 attorney, an attending physician or mental health care provider  
2 shall comply with a mental health care decision made by a mental  
3 health care agent to the same extent as if the decision had been  
4 made by the principal.

5 (b) Mental health record.--

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

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

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

22 § 5843. Construction.

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

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

28 (2) Authorize a mental health care agent to consent to  
29 any mental health care prohibited by the laws of this  
30 Commonwealth.



1           (3) Affect the laws of this Commonwealth regarding any  
2 of the following:

3           (i) The standard of care of a mental health care  
4 provider required in the administration of mental health  
5 care or the clinical decision-making authority of the  
6 mental health care provider.

7           (ii) When consent is required for mental health  
8 care.

9           (iii) Informed consent for mental health care.

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

14          (b) Disclosure.--

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

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

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

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

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

1 1985.

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

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

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

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

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

29 § 5844. ~~Conflicting mental health powers of attorney~~ <—  
30 PROVISIONS. <—

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

3 (1) THE PROVISION OF ANOTHER MENTAL HEALTH POWER of  
4 attorney or with a provision of a declaration, the provision  
5 of the instrument latest in date of execution shall prevail  
6 to the extent of the conflict.

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

10 § 5845. Validity.

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

21 SECTION 2. SECTION 7203(D) OF TITLE 20 IS AMENDED TO READ: <—

22 § 7203. PRUDENT INVESTOR RULE.

23 \* \* \*

24 (D) REQUIREMENTS FOR CHARITABLE TRUSTS [HOLDING A  
25 CONTROLLING INTEREST IN] HAVING VOTING CONTROL OF CERTAIN  
26 PUBLICLY TRADED BUSINESS CORPORATIONS.--

27 (1) NOTWITHSTANDING ANY OTHER LEGAL REQUIREMENT OR  
28 PROCESS WHICH MAY INCLUDE COURT REVIEW OF THE ACTIVITIES OF A  
29 CHARITABLE TRUST, A FIDUCIARY FOR A CHARITABLE TRUST WITH A  
30 MAJORITY OF ITS BENEFICIARIES AT A PRINCIPAL LOCATION WITHIN

1 THIS COMMONWEALTH [HOLDING A CONTROLLING INTEREST IN] HAVING  
2 VOTING CONTROL OF A PUBLICLY TRADED BUSINESS CORPORATION  
3 RECEIVED AS AN ASSET FROM THE SETTLOR SHALL NOT CONSUMMATE  
4 ANY [INVESTMENT OR MANAGEMENT DECISION EXECUTING A CHANGE IN  
5 THE TRUST'S] TRANSACTION, OR VOTE TO PERMIT CONSUMMATION OF  
6 OR OTHERWISE ACT TO CONSUMMATE ANY TRANSACTION, WHICH WOULD  
7 RESULT IN THE TRUST NO LONGER HAVING VOTING CONTROL OF THAT  
8 CORPORATION, BY SALE, MERGER, CONSOLIDATION OR OTHERWISE,  
9 WITHOUT:

10 (I) SERVING NOTICE UPON THE ATTORNEY GENERAL AT  
11 LEAST 60 DAYS PRIOR TO [EXECUTING] THE [CHANGE IN  
12 CONTROL] CONSUMMATION OF THE TRANSACTION; AND

13 (II) DIRECTING THAT AT LEAST 30 DAYS' PRIOR NOTICE  
14 OF THE [EXECUTION OF THE CHANGE IN CONTROL] CONSUMMATION  
15 OF THE TRANSACTION BE PROVIDED BY THE PUBLICLY TRADED  
16 BUSINESS CORPORATION CONTROLLED BY THE TRUST TO EMPLOYEES  
17 OF [THE PUBLICLY TRADED BUSINESS] THAT CORPORATION [HELD  
18 BY THE TRUST] WHO ARE LOCATED IN THIS COMMONWEALTH.

19 (2) IN ADDITION TO ANY OTHER POWER OR DUTY PROVIDED BY  
20 LAW, THE ATTORNEY GENERAL ALSO HAS THE POWER TO [OBTAIN] SEEK  
21 JUDICIAL REVIEW PURSUANT TO THIS SUBSECTION FROM THE COURT  
22 HAVING JURISDICTION OVER THE TRUST IF THE ATTORNEY GENERAL  
23 CONCLUDES THAT THE [FIDUCIARY SHOULD BE PREVENTED FROM  
24 EXECUTING SUCH A CHANGE IN CONTROL.] CONSUMMATION OF A  
25 TRANSACTION DESCRIBED IN PARAGRAPH (1) IS UNNECESSARY FOR THE  
26 FUTURE ECONOMIC VIABILITY OF THE CORPORATION AND WOULD  
27 CONSTITUTE A FAILURE TO COMPLY WITH THE PROVISIONS OF  
28 SUBSECTION (C) OR AN IMPAIRMENT OF THE CHARITABLE PURPOSE OF  
29 THE TRUST.

30 (3) IN [OBTAINING JUDICIAL APPROVAL] A JUDICIAL

1 PROCEEDING COMMENCED BY THE ATTORNEY GENERAL UNDER THIS  
2 SUBSECTION, THE [FIDUCIARY] ATTORNEY GENERAL MUST PROVE BY  
3 [CLEAR AND CONVINCING] A PREPONDERANCE OF THE EVIDENCE THAT  
4 [EXECUTING THE CHANGE IN THE TRUST'S] CONSUMMATION OF A  
5 TRANSACTION WHICH WOULD RESULT IN THE CHARITABLE TRUST NO  
6 LONGER HAVING VOTING CONTROL OF THE CORPORATION [IS NECESSARY  
7 TO MAINTAIN THE ECONOMIC VIABILITY OF THE CORPORATION AND  
8 PREVENT A SIGNIFICANT DIMINUTION OF TRUST ASSETS OR TO AVOID]  
9 IS UNNECESSARY FOR THE FUTURE ECONOMIC VIABILITY OF THE  
10 CORPORATION AND MUST BE PREVENTED IN ORDER TO AVOID  
11 NONCOMPLIANCE WITH THE PROVISIONS OF SUBSECTION (C) OR AN  
12 IMPAIRMENT OF THE CHARITABLE PURPOSE OF THE TRUST.

13 (3.1) IF A FIDUCIARY PROVIDES THE NOTICE UNDER PARAGRAPH  
14 (1)(I), THE FOLLOWING APPLY:

15 (I) EXCEPT AS SET FORTH IN SUBPARAGRAPH (II), UPON  
16 EXPIRATION OF THE NOTICE PERIOD UNDER PARAGRAPH (1)(I),  
17 THE FIDUCIARY MAY:

18 (A) VOTE TO PERMIT CONSUMMATION OF A TRANSACTION  
19 DESCRIBED IN PARAGRAPH (1); OR

20 (B) OTHERWISE ACT TO CONSUMMATE THE TRANSACTION  
21 DESCRIBED IN PARAGRAPH (1).

22 (II) THE FIDUCIARY HAS NO AUTHORITY UNDER  
23 SUBPARAGRAPH (I) IF THE ATTORNEY GENERAL HAS, WITHIN 30  
24 DAYS OF RECEIVING THE NOTICE UNDER PARAGRAPH (1)(I),  
25 COMMENCED A JUDICIAL PROCEEDING UNDER PARAGRAPH (2).

26 (III) IF THE FIDUCIARY IS ENJOINED IN A JUDICIAL  
27 PROCEEDING UNDER SUBPARAGRAPH (II), THE FIDUCIARY SHALL  
28 NOT HAVE AUTHORITY UNDER SUBPARAGRAPH (I)(A) OR (B)  
29 UNLESS THE INJUNCTION IS DISSOLVED BY:

30 (A) STIPULATION OF THE FIDUCIARY AND THE

1                   ATTORNEY GENERAL; OR

2                   (B) AN ORDER OF A COURT OF COMPETENT

3                   JURISDICTION WHICH IS NOT SUBJECT TO FURTHER JUDICIAL

4                   REVIEW AS OF RIGHT.

5           (4) IN THE EVENT COURT APPROVAL TO CONSUMMATE A  
6           TRANSACTION DESCRIBED IN PARAGRAPH (1) IS OBTAINED PURSUANT  
7           TO THIS SUBSECTION, THE COURT SHALL ENSURE THAT THE  
8           PROVISIONS OF 15 PA.C.S. CH. 25 SUBCHS. I (RELATING TO  
9           SEVERANCE COMPENSATION FOR EMPLOYEES TERMINATED FOLLOWING  
10          CERTAIN CONTROL-SHARE ACQUISITIONS) AND J (RELATING TO  
11          BUSINESS COMBINATION TRANSACTIONS - LABOR CONTRACTS) APPLY TO  
12          THE [EXECUTION OF A CHANGE IN THE TRUST'S CONTROL EFFECTUATED  
13          BY THE FIDUCIARY OF A CHARITABLE TRUST WITH BENEFICIARIES AT  
14          A PRINCIPAL LOCATION WITHIN THIS COMMONWEALTH HOLDING A  
15          CONTROLLING INTEREST IN A PUBLICLY TRADED] BUSINESS  
16          CORPORATION [RECEIVED AS AN ASSET FROM THE SETTLOR.]  
17          DESCRIBED IN PARAGRAPH (1) UPON THE CONSUMMATION OF THE  
18          TRANSACTION.

19          (5) A FIDUCIARY OF A CHARITABLE TRUST WITH A MAJORITY OF  
20          ITS BENEFICIARIES AT A PRINCIPAL LOCATION WITHIN THIS  
21          COMMONWEALTH [HOLDING A CONTROLLING INTEREST IN] HAVING  
22          VOTING CONTROL OF A PUBLICLY TRADED BUSINESS CORPORATION  
23          RECEIVED AS AN ASSET FROM THE SETTLOR SHALL NOT BE SUBJECT TO  
24          LIABILITY FOR THE COMMERCIALLY REASONABLE SALE OF CERTAIN  
25          SHARES OF THE CORPORATION NOT NECESSARY TO MAINTAIN VOTING  
26          CONTROL AND FOR WHICH NO CONTROL PREMIUM IS REALIZED IF THE  
27          FIDUCIARY REASONABLY DETERMINED THAT SUCH SALE WAS AUTHORIZED  
28          IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION  
29          AND OTHER APPLICABLE PROVISIONS OF THIS TITLE.

30          (6) THE REQUIREMENTS OF THIS SUBSECTION SHALL NOT APPLY

1 TO A NONCHARITABLE TRUST, INCLUDING A NONCHARITABLE TRUST  
2 WITH A CHARITABLE REMAINDER AND A CHARITABLE TRUST WHICH  
3 REVERTS TO NONCHARITABLE PURPOSES.

4 (7) AS USED IN THIS SUBSECTION, THE TERM "VOTING  
5 CONTROL" MEANS A MAJORITY OF THE VOTING POWER OF THE  
6 OUTSTANDING SHARES OF STOCK ENTITLED TO VOTE ON THE ELECTION  
7 OF DIRECTORS.

8 SECTION 3. SECTION 4 OF THE ACT OF NOVEMBER 6, 2002  
9 (P.L.1101, NO.133), ENTITLED "AN ACT AMENDING TITLE 20  
10 (DECEDENTS, ESTATES AND FIDUCIARIES) OF THE PENNSYLVANIA  
11 CONSOLIDATED STATUTES, FURTHER PROVIDING FOR THE PRUDENT  
12 INVESTOR RULE; CODIFYING EXISTING LAW SETTING FORTH THE  
13 APPLICABILITY OF PROVISIONS RELATING TO DIVERSIFICATION; AND  
14 MAKING A REPEAL," IS REPEALED.

15 Section ~~2~~ 4. The provisions of this act are severable. If <—  
16 any provision of this act or its application to any person or  
17 circumstance is held invalid, the invalidity shall not affect  
18 other provisions or applications of this act which can be given  
19 effect without the invalid provision or application.

20 ~~Section 3. This act shall take effect in 60 days.~~ <—

21 SECTION 5. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

22 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT  
23 IMMEDIATELY:

24 (I) THE AMENDMENT OF 20 PA.C.S. § 7203(D).

25 (II) SECTION 3 OF THIS ACT.

26 (III) THIS SECTION.

27 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
28 DAYS.