

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2036 Session of
2003

INTRODUCED BY KENNEY, KOTIK, PAYNE, BEBKO-JONES, BELFANTI,
BENNINGHOFF, BUNT, CORRIGAN, COY, CURRY, DeWEESE, D. EVANS,
FLEAGLE, GEIST, HARHAI, HARHART, HERMAN, HESS, JAMES, KELLER,
KIRKLAND, LEACH, MACKERETH, MAITLAND, McGEEHAN, MCGILL,
MUNDY, MYERS, NICKOL, O'NEILL, PALLONE, REICHLEY, ROSS,
SANTONI, SATHER, SEMMEL, SOLOBAY, STURLA, J. TAYLOR, THOMAS,
TIGUE, TRUE, VANCE, WALKO, WATSON, WEBER AND YOUNGBLOOD,
OCTOBER 8, 2003

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
OCTOBER 8, 2003

AN ACT

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

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

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

8 CHAPTER 58

9 MENTAL HEALTH CARE

10 Subchapter

11 A. General Provisions

12 B. Mental Health Care Declarations

13 C. Mental Health Care Powers of Attorney

14 SUBCHAPTER A

15 GENERAL PROVISIONS

1 Sec.
2 5801. Applicability.
3 5802. Definitions.
4 5803. Legislative findings and intent.
5 5804. Compliance.
6 5805. Liability.
7 5806. Penalties.
8 5807. Rights and responsibilities.
9 5808. Combining mental health care instruments.

10 § 5801. Applicability.

11 (a) General rule.--This chapter applies to mental health
12 care declarations and mental health care powers of attorney.

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

17 § 5802. Definitions.

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

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

24 "Declarant." An individual who makes a declaration in
25 accordance with this chapter.

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

30 "Mental health care." Any care, treatment, service or

1 procedure to maintain, diagnose, treat or provide for mental
2 health, including any medication program and therapeutical
3 treatment.

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

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

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

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

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

18 § 5803. Legislative findings and intent.

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

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

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

1 § 5804. Compliance.

2 (a) Duty to comply.--

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

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

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

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

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

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

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

29 § 5805. Liability.

30 (a) General rule.--A person who is a physician, another

1 mental health care provider or another person who acts in good
2 faith and consistent with this chapter may not be subject to
3 criminal or civil liability, discipline for unprofessional
4 conduct or administrative sanctions and may not be found to have
5 committed an act of unprofessional conduct by the State Board of
6 Medicine or the State Board of Osteopathic Medicine as a result
7 of any of the following:

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

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

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

20 (4) Disclosing mental health care information to another
21 person based upon a good faith belief that the disclosure is
22 authorized, permitted or required by this 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 care 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 care power of
10 attorney or any amendment or revocation thereof without the
11 consent of 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 care 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 power of attorney may be removed and sued for
21 actual damages.

22 § 5807. Rights and responsibilities.

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

26 (1) Persons are presumed capable of making mental health
27 decisions unless they are adjudicated incapacitated,
28 involuntarily committed or found to be incapable of making
29 mental health decisions after examination by a psychiatrist
30 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 power of attorney.

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

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

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

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

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

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

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

25 § 5808. Combining mental health care instruments.

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

29 (b) Form.--A combined declaration and mental health care
30 power of attorney may be in the following form or any other

1 written form which contains the information required under
2 Subchapters B (relating to mental health care declarations) and
3 C (relating to mental health care powers of attorney):

4 Combined Mental Health Care Declaration

5 and Power of Attorney Form

6 Part I. Introduction.

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

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

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

25 Part II. Mental Health Care Declaration.

26 A. When this declaration becomes effective.

27 This declaration becomes effective at the following
28 designated time:

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

() When the following condition is met:

(List condition)

B. Treatment preferences.

1. Choice of treatment facility.

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

(Insert name and address of facility)

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

(Insert name and address of facility)

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

2. Preferences regarding medications for psychiatric treatment.

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

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

(List medication and reason for exception or limitation)

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

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

() I consent to the administration of electroconvulsive

1 therapy.

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

5 4. Preferences for experimental studies or drug trials.

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

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

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

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

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

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

21 5. Additional instructions or information.

22 Examples of other instructions or information that may be
23 included:

24 Activities that help or worsen symptoms.

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

27 Mental and physical health history.

28 Dietary requirements.

29 Religious preferences.

30 Temporary custody of children.

1 Family notification.

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

3 Limitations on the release or disclosure of
4 mental health records.

5 Instructions related to preferences if you are
6 pregnant.

7 Other matters of importance.

8 C. Revocation.

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

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

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

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

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

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

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

28 D. Termination.

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

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

5 (Specify date)

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

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

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

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

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

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

24 Part III. Mental Health Care Power of Attorney.

25 I, , being of sound mind, authorize my
26 designated health care agent to make certain decisions on my
27 behalf regarding my mental health care. If I have not
28 expressed a choice in this document or in the accompanying
29 declaration, I authorize my agent to make the decision that
30 my agent determines is the decision I would make if I were

1 competent to do so.

2 A. Designation of agent.

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

8 (Insert name of designated person)

9 Signed:

10 (My name, address, telephone number)

11 (Witnesses signatures)

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

13 Agent's acceptance:

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

16 Agent's signature:

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

18 B. Designation of alternative agent.

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

24 (Insert name of designated person)

25 Signed:

26 (My name, address, telephone number)

27 (Witnesses signatures)

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

29 Alternative agent's acceptance:

30 I hereby accept designation as alternative mental health care

1 agent for (Insert name of declarant)

2 Alternative agent's signature:

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

4 C. When this power of attorney become effective.

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

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

9 () When the following condition is met:

10 (List condition)

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

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

19 (1) Voluntary commitment.

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

22 (2) Preferences regarding medications for psychiatric
23 treatment.

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

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

29 (3) Preferences regarding electroconvulsive therapy
30 (ECT).

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

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

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

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

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

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

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

20 E. Revocation.

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

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

26 My revocation will be effective upon communication to my
27 attending physician or other mental health care provider,
28 either by me or a witness to my revocation. If I choose to
29 revoke a particular instruction contained in this power of
30 attorney in the manner specified, I understand that the other

1 instructions contained in this power of attorney will remain
2 effective until:

- 3 (1) I revoke this power of attorney in its entirety;
4 (2) I make a new combined mental health care declaration
5 and power of attorney; or
6 (3) until the date that I have specified as the
7 termination date.

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

10 F. Termination.

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

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

17 (Specify date)

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

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

24 My signature:

25 (My name, address, telephone number)

26 Witnesses signatures:

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

28 If the principal making this combined mental health care
29 declaration and power of attorney is unable to sign this
30 document, another individual may sign on behalf of and at the

1 direction of the principal.

2 Signature of person signing on my behalf:

3 Signature

4 (Name, address, telephone number)

5 SUBCHAPTER B

6 MENTAL HEALTH CARE DECLARATIONS

7 Sec.

8 5821. Short title of subchapter.

9 5822. Execution.

10 5823. Form.

11 5824. Operation.

12 5825. Revocation.

13 5826. Amendment.

14 § 5821. Short title of subchapter.

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

17 § 5822. Execution.

18 (a) Who may make.--An individual who is at least 18 years of
19 age and has not been deemed incapacitated pursuant to section
20 5511 (relating to petition and hearing; independent evaluation)
21 or severely mentally disabled pursuant to section 301 of the act
22 of July 9, 1976 (P.L.817, No.143), known as the Mental Health
23 Procedures Act, may make a declaration governing the initiation,
24 continuation, withholding or withdrawal of mental health
25 treatment.

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

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

30 (2) Witnessed by two individuals, each of whom must be

1 at least 18 years of age.

2 (c) Witnesses.--

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

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

10 § 5823. Form.

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

18 Mental Health Care Declaration.

19 I, , being of sound mind, willfully and
20 voluntarily make this declaration regarding my mental health
21 care.

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

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

7 A. When this declaration becomes effective.

8 This declaration becomes effective at the following
9 designated time:

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

12 () When the following condition is met:

13 (List condition)

14 B. Treatment preferences.

15 1. Choice of treatment facility.

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

19 (Insert name and address of facility)

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

23 (Insert name and address of facility)

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

26 2. Preferences regarding medications for psychiatric
27 treatment.

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

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

(List medication and reason for exception or limitation)

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

3. Preferences regarding electroconvulsive therapy (ETC).

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

() I consent to the administration of electroconvulsive therapy.

4. Preferences for experimental studies or drug trials.

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

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

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

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

5. Additional instructions or information:

Examples of other instructions or information that may be included:

Activities that help or worsen symptoms.

Type of intervention preferred in the event of a crisis.

Mental and physical health history.

Dietary requirements.

Religious preferences.

Temporary custody of children.

Family notification.

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

2 Limitations on the release or disclosure of mental
3 health records.

4 Instructions related to preferences if you are
5 pregnant.

6 Other matters of importance.

7 C. Revocation.

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

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

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

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

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

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

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

26 D. Termination.

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

29 () This declaration will automatically terminate upon the
30 date specified unless I am deemed incapable of making mental

1 health care decisions at the time that the declaration would
2 expire.

3 (Specify date)

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

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 record of the
17 declarant and, if unwilling to comply with the declaration,
18 promptly so advise the declarant.

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

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

29 § 5825. Revocation.

30 (a) When declaration may be revoked.--An individual shall

1 specify in a declaration whether it may be revoked by the
2 individual:

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

6 (2) at the time specified for termination.

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

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

14 § 5826. Amendment.

15 While of sound mind, a declarant may amend a declaration by a
16 writing executed in accordance with the provisions of section
17 5822 (relating to execution).

18 SUBCHAPTER C

19 MENTAL HEALTH CARE POWERS OF ATTORNEY

20 Sec.

21 5831. Short title of subchapter.

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2 guardian and other agents.

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4 provider.

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7 5845. Validity.

8 § 5831. Short title of subchapter.

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

11 § 5832. Execution.

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

20 (b) Requirements.--A power of attorney must be:

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

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

26 (c) Witnesses.--

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

30 (2) A mental health care provider and its agent may not

1 sign a power of attorney on behalf of and at the direction of
2 a principal if the mental health care provider or agent
3 provides mental health care services to the principal.

4 § 5833. Form.

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

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

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

12 (b) Optional provisions.--A mental health care power of
13 attorney may:

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

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

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

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

27 (c) Written form.--A mental health care power of attorney
28 may be in the following form or any other written form
29 identifying the principal, appointing a mental health care agent
30 and declaring that the principal authorizes the mental health

1 care agent to make mental health care decisions on behalf of the
2 principal.

3 Mental Health Care Power of Attorney

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

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

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

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

28 (Insert name of designated person)

29 Signed:

30 (My name, address, telephone number)

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

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

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

9 1. Treatment preferences.

10 (a) Choice of treatment facility.

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

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

16 (Insert name and address of facility)

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

20 (Insert name and address of facility)

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

23 (b) Preferences regarding medications for psychiatric
24 treatment.

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

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

30 () I consent to the medications that my agent agrees to,

1 with the following exception or limitation:

2 (List exception or limitation)

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

5 (c) Preferences regarding electroconvulsive therapy
6 (ECT).

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

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

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

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

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

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

26 (e) Additional information and instructions.

27 Examples of other information that may be included:

28 Activities that help or worsen symptoms.

29 Type of intervention preferred in the event of a
30 crisis.

1 Mental and physical health history.

2 Dietary requirements.

3 Religious preferences.

4 Temporary custody of children.

5 Family notification.

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

7 Limitations on release or disclosure of mental
8 health records.

9 Instructions related to preferences if you are
10 pregnant.

11 Other matters of importance.

12 E. Revocation.

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

15 () At any time, either orally or in writing, as long as I
16 have not been found to be incapable of making mental health
17 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. If I choose to
21 revoke a particular instruction contained in this power of
22 attorney in the manner specified, I understand that the other
23 instructions contained in this power of attorney will remain
24 effective until:

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

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

27 or

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

30 () This power of attorney will remain effective until the

1 time specified for termination.

2 F. Termination.

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

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

9 (Specify date)

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

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

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

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

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

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

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

29 My signature

30 (My Name, address, telephone number)

Witnesses' signatures:

(Names, addresses, telephone numbers of witnesses)

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

Signature of person signing on my behalf:

Signature

(Name, address telephone number)

§ 5834. Operation.

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

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

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

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

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

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

§ 5835. Appointment of mental health care agents.

(a) Successor mental health care agents.--A principal may

1 appoint one or more successor agents who shall serve in the
2 order named in the mental health care power of attorney unless
3 the principal expressly directs to the contrary.

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

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

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

13 § 5836. Authority of mental health care agent.

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

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

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

28 (d) Mental health care decisions.--After consultation with
29 mental health care providers and after consideration of the
30 prognosis and acceptable alternatives regarding diagnosis,

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

12 (e) Mental health care information.--

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

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

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

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

29 (f) Liability of agent.--A mental health care agent shall
30 not be personally liable for the costs of care and treatment of

1 the principal.

2 § 5837. Removal of agent.

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

5 (1) Death or incapacity.

6 (2) Noncompliance with a power of attorney.

7 (3) Physical assault or threats of harm.

8 (4) Coercion.

9 (5) Voluntary withdrawal by the agent.

10 (6) Divorce.

11 (b) Notice of voluntary withdrawal.--

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

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

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

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

25 § 5838. Effect of divorce.

26 If the spouse of a principal is designated as the principal's
27 mental health care agent and thereafter either spouse files an
28 action in divorce, the designation of the spouse as mental
29 health care agent shall be revoked as of the time the action is
30 filed unless it clearly appears from the mental health care

1 power of attorney that the designation was intended to continue
2 to be effective notwithstanding the filing of an action in
3 divorce by either spouse.

4 § 5839. Revocation.

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

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

11 (2) at the time designated for termination.

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

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

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

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

27 § 5840. Amendment.

28 While of sound mind, a principal may amend a mental health
29 care power of attorney by a writing executed in accordance with
30 the provisions of section 5832 (relating to execution).

1 § 5841. Relation of mental health care agent to court-appointed
2 guardian and other agents.

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

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

17 § 5842. Duties of attending physician and mental health care
18 provider.

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

25 (b) Mental health record.--

26 (1) An attending physician or mental health care
27 provider who is given a mental health care power of attorney
28 shall arrange for the mental health care power of attorney or
29 a copy to be placed in the mental health record of the
30 principal.

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

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

13 § 5843. Construction.

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

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

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

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

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

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

30 (iii) Informed consent for mental health care.

1 (b) Disclosure.--

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

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

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

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

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

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

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

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

30 § 5844. Conflicting mental health care powers of attorney.

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

6 § 5845. Validity.

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

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

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

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

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

22 Section 3. (a) The repeal of the form of the declaration in
23 20 Pa.C.S. § 5404(b) shall not affect the validity of any
24 declaration executed pursuant to that form before, on or after
25 the effective date of this act.

26 (b) The repeal of 20 Pa.C.S. §§ 5602(a)(8) and (9) and
27 5603(h) shall not affect the authority of an agent operating
28 under any power of attorney relying on those provisions,
29 executed before the effective date of the repeal of those
30 provisions.

1 Section 4. This act shall take effect in 60 days.