

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2036

Session of
2003

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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JULY 1, 2004

AN ACT

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

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

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

CHAPTER 58

MENTAL HEALTH CARE

10 Subchapter

11 A. General Provisions

12 B. Mental Health ~~Care~~ Declarations <—

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

14 SUBCHAPTER A

GENERAL PROVISIONS

Sec.

5801. Applicability.

5802. Definitions.

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5804. Compliance.

5805. Liability.

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5807. Rights and responsibilities.

5808. Combining mental health care instruments.

§ 5801. Applicability.

(a) General rule.--This chapter applies to mental health

~~care declarations and mental health care~~ DECLARATIONS AND MENTAL HEALTH powers of attorney. <—

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

§ 5802. Definitions.

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

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

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

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

1 may contain other specific directions.

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

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

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

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

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

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

22 § 5803. Legislative findings and intent.

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

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

1 treatment.

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

5 § 5804. Compliance.

6 (a) Duty to comply.--

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

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

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

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

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

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

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

1 (b) Transfer.--An attending physician or mental health care
2 provider under subsection (a)(2) shall make every reasonable
3 effort to assist in the transfer of the declarant or principal
4 to another physician or mental health care provider who will
5 comply with the declaration or mental health care decision of
6 the mental health care agent. WHILE THE TRANSFER IS PENDING, THE <—
7 PATIENT SHALL BE TREATED CONSISTENT WITH THE ADVANCE DIRECTIVE.
8 IF REASONABLE EFFORTS TO TRANSFER FAIL, THE PATIENT MAY BE
9 DISCHARGED.

10 § 5805. Liability.

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

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

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

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

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

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

7 (6) Refusing to comply with a mental health directive
8 which violates accepted clinical standards or medical
9 standards of care.

10 (7) Making a determination that the patient lacks
11 capacity to make mental health decisions that causes a mental
12 health advance directive to become effective.

13 (8) FAILING TO DETERMINE THAT A PATIENT LACKS CAPACITY <—
14 TO MAKE MENTAL HEALTH DECISIONS FOR THE PURPOSES OF THIS ACT.

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

19 (c) Good faith of mental health care agent.--A mental health
20 care agent who acts according to the terms of a mental health
21 ~~care~~ power of attorney may not be subject to civil or criminal <—
22 liability for acting in good faith for a principal or failing in
23 good faith to act for a principal.

24 § 5806. Penalties.

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

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

30 (2) Concealing, canceling, altering, defacing,

obliterating or damaging a mental health ~~care~~ power of attorney or any amendment or revocation thereof without the consent of the principal.

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

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

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

§ 5807. Rights and responsibilities.

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

(1) ~~Persons~~ FOR THE PURPOSES OF THIS ACT, PERSONS are presumed capable of making mental health decisions, INCLUDING THE EXECUTION OF A MENTAL HEALTH DECLARATION OR POWER OF ATTORNEY, unless they are adjudicated incapacitated, involuntarily committed or found to be incapable of making mental health decisions after examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, at least one of the decision makers shall be a treating professional of the declarant or principal.

(2) Persons shall be required to notify their mental health care provider of the existence of any declaration or

MENTAL HEALTH power of attorney.

<—

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

<—

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

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

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

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

(3) Not require declarations or powers of attorney as conditions of treatment. Mental health treatment providers may not choose whether to accept a person for treatment based SOLELY on the existence, ~~absence or contents~~ OR ABSENCE of a mental health declaration or power of attorney.

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

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

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(b) Form.--A combined declaration and mental health ~~care~~ power of attorney may be in the following form or any other written form which contains the information required under Subchapters B (relating to mental health care declarations) and

<—

1 C (relating to mental health care powers of attorney):

2 Combined Mental Health Care Declaration

3 and Power of Attorney Form

4 Part I. Introduction.

5 I, , having capacity to make mental health
6 decisions, willfully and voluntarily make this declaration
7 and power of attorney regarding my mental health care.

8 I understand that mental health care includes any care,
9 treatment, service or procedure to maintain, diagnose, treat
10 or provide for mental health, including any medication

11 program and therapeutic treatment. ~~Mental health care does~~ <—

12 ~~not include electroconvulsive therapy,~~ ELECTROCONVULSIVE <—

13 THERAPY MAY BE ADMINISTERED ONLY IF I HAVE SPECIFICALLY

14 CONSENTED TO IT IN THIS DOCUMENT. I WILL BE THE SUBJECT OF

15 laboratory trials or research ONLY IF SPECIFICALLY PROVIDED <—

16 FOR IN THIS DOCUMENT. Mental health care does not include

17 psychosurgery or termination of parental rights.

18 I understand that my incapacity will be determined by
19 examination by a psychiatrist and one of the following:

20 another psychiatrist, psychologist, family physician,
21 attending physician or mental health treatment professional.

22 Whenever possible, one of the decision makers will be one of
23 my treating professionals.

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

25 A. When this declaration becomes effective.

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

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

30 () When the following condition is met:

1 (List condition)

2 B. Treatment preferences.

3 1. Choice of treatment facility.

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

7 (Insert name and address of facility)

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

11 (Insert name and address of facility)

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

14 2. Preferences regarding medications for psychiatric
15 treatment.

16 () I consent to the medications that my treating physician
17 recommends.

18 () I consent to the medications that my treating physician
19 recommends with the following exception, PREFERENCE or <—
20 limitation:

21 (List medication and reason for exception, PREFERENCE or <—
22 limitation)

23 The exception, PREFERENCE or limitation applies to generic, <—
24 brand name and trade name equivalents. I understand that
25 dosage instructions are not binding on my physician.

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

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

30 3. Preferences regarding electroconvulsive therapy

1 (ECT).

2 () I consent to the administration of electroconvulsive
3 therapy.

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

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

9 4. Preferences for experimental studies or drug trials.

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

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

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

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

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

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

25 5. Additional instructions or information.

26 Examples of other instructions or information that may be
27 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 Limitations on the release or disclosure of
7 mental health records.

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

<—

10 Other matters of importance.

11 C. Revocation.

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

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

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

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

<—

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

26 D. Termination.

27 I understand that this declaration will automatically
28 terminate two years from the date of execution, unless I am
29 deemed incapable of making mental health care decisions at
30 the time that this declaration would expire.

(Specify date)

E. Preference as to a court-appointed guardian.

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

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

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

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

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

←

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

A. Designation of agent.

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

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

1 decisions.

2 () When the following condition is met:

3 (List condition)

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

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

12 (1) Preferences regarding medications for psychiatric
13 treatment.

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

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

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

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

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

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

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

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

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

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

E. Revocation.

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

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

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

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

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

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

1 (insert year).
2 My signature:
3 (My name, address, telephone number)
4 Witnesses signatures:
5 (Names, addresses, telephone numbers of witnesses).
6 If the principal making this combined mental health care
7 declaration and power of attorney is unable to sign this
8 document, another individual may sign on behalf of and at the
9 direction of the principal.
10 Signature of person signing on my behalf:
11 Signature
12 (Name, address, telephone number)

13 SUBCHAPTER B
14 MENTAL HEALTH ~~CARE~~ DECLARATIONS

15 Sec.
16 5821. Short title of subchapter.
17 5822. Execution.
18 5823. Form.
19 5824. Operation.
20 5825. Revocation.
21 5826. Amendment.
22 § 5821. Short title of subchapter.

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

25 § 5822. Execution.

26 (a) Who may make.--An individual who is at least 18 years of
27 age or an emancipated minor and has not been deemed
28 incapacitated pursuant to section 5511 (relating to petition and
29 hearing; independent evaluation) or severely mentally disabled
30 pursuant to ~~section 301~~ ARTICLE III of the act of July 9, 1976

1 (P.L.817, No.143), known as the Mental Health Procedures Act,
2 may make a declaration governing the initiation, continuation,
3 withholding or withdrawal of mental health treatment.

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

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

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

10 (c) Witnesses.--

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

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

18 § 5823. Form.

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

26 Mental Health ~~Care~~ Declaration.

<—

27 I, _____, having the capacity to make mental
28 health decisions, willfully and voluntarily make this
29 declaration regarding my mental health care.

30 I understand that mental health care includes any care,

treatment, service or procedure to maintain, diagnose, treat
or provide for mental health, including any medication
program and therapeutic treatment. ~~Mental health care does~~ <—
~~not include electroconvulsive therapy,~~ 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, ~~unless~~ 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:

(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

1 following facility:

2 (Insert name and address of facility)

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

5 2. Preferences regarding medications for psychiatric
6 treatment.

7 () I consent to the medications that my treating physician
8 recommends with the following exception, PREFERENCE or <—
9 limitation:

10 (List medication and reason for exception, PREFERENCE or <—
11 limitation)

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

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

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

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

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

22 4. Preferences for experimental studies or drug trials.

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

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

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

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

5. Additional instructions or information:

Examples of other instructions or information that may be included:

Activities that help or worsen symptoms.

Type of intervention preferred in the event of a crisis.

Mental and physical health history.

Dietary requirements.

Religious preferences.

Temporary custody of children.

Family notification.

Limitations on the release or disclosure of mental health records.

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

<—

Other matters of importance.

C. Revocation.

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

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

(1) I revoke this declaration in its entirety;

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

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

2 D. Termination.

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

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

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

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

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

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

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

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

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

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

30 Signature of person signing on my behalf:

1 (Name, address and telephone number)

2 § 5824. Operation.

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

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

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

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

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

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

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

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

1 § 5825. Revocation.

2 ~~(a) When declaration may be revoked. An individual shall~~ <—
3 ~~specify in a declaration whether it may be revoked by the~~
4 ~~individual at any time and in any manner, only if the individual~~
5 ~~has not been found to be incapable of making mental health~~
6 ~~treatment decisions.~~

7 (A) WHEN DECLARATION MAY BE REVOKED.--A DECLARATION MAY BE <—
8 REVOKED BY THE DECLARANT AT ANY TIME, EITHER ORALLY OR IN
9 WRITING IN WHOLE OR IN PART UNLESS THE INDIVIDUAL HAS BEEN FOUND
10 TO BE INCAPABLE OF MAKING MENTAL HEALTH DECISIONS OR THE
11 INDIVIDUAL HAS BEEN INVOLUNTARILY COMMITTED.

12 (B) CAPACITY TO REVOKE.--SUBSECTION (A) NOTWITHSTANDING,
13 DURING A PERIOD OF INVOLUNTARY COMMITMENT PURSUANT TO ARTICLE
14 III OF THE ACT OF JULY 9, 1976 (P.L.817, NO.143), KNOWN AS THE
15 MENTAL HEALTH PROCEDURES ACT, A DECLARANT MAY REVOKE THE
16 DECLARATION ONLY IF FOUND TO BE CAPABLE OF MAKING MENTAL HEALTH
17 DECISIONS AFTER EXAMINATION BY A PSYCHIATRIST AND ONE OF THE
18 FOLLOWING: ANOTHER PSYCHIATRIST, A PSYCHOLOGIST, FAMILY
19 PHYSICIAN, ATTENDING PHYSICIAN OR MENTAL TREATMENT PROFESSIONAL.
20 WHENEVER POSSIBLE, AT LEAST ONE OF THE DECISION MAKERS SHALL BE
21 A TREATING PROFESSIONAL OF THE DECLARANT OR PRINCIPAL.

22 ~~(b)~~ (C) Effect of revocation.--A revocation of a declaration <—
23 shall be effective upon communication to the attending physician
24 or other mental health care provider by the declarant or a
25 witness to the revocation of the intent to revoke.

26 ~~(e)~~ (D) Mental health record.--An attending physician or <—
27 other mental health care provider shall make revocation, A <—
28 FINDING OF CAPACITY or a declaration part of the mental health
29 record of the declarant.

30 § 5826. Amendment.

1 (A) CAPACITY TO AMEND.--While having the capacity to make <—
2 mental health decisions, a declarant may amend a declaration by
3 a writing executed in accordance with the provisions of section
4 5822 (relating to execution).

5 (B) DETERMINATION OF CAPACITY.--DURING THE PERIOD OF <—
6 INVOLUNTARY TREATMENT PURSUANT TO ARTICLE III OF THE ACT OF JULY
7 9, 1976 (P.L.817, NO.143), KNOWN AS THE MENTAL HEALTH PROCEDURES
8 ACT, A DECLARANT MAY AMEND THE DECLARATION IF THE INDIVIDUAL IS
9 FOUND TO BE CAPABLE OF MAKING MENTAL HEALTH DECISIONS AFTER
10 EXAMINATION BY A PSYCHIATRIST AND ONE OF THE FOLLOWING: ANOTHER
11 PSYCHIATRIST, A PSYCHOLOGIST, FAMILY PHYSICIAN, ATTENDING
12 PHYSICIAN OR MENTAL HEALTH TREATMENT PROFESSIONAL. WHENEVER
13 POSSIBLE, AT LEAST ONE OF THE DECISION MAKERS SHALL BE A
14 TREATING PROFESSIONAL OF THE DECLARANT OR PRINCIPAL.

15 SUBCHAPTER C

16 MENTAL HEALTH ~~CARE~~ POWERS OF ATTORNEY <—
17 Sec.

18 5831. Short title of subchapter.

19 5832. Execution.

20 5833. Form.

21 5834. Operation.

22 5835. Appointment of mental health care agents.

23 5836. Authority of mental health care agent.

24 5837. Removal of agent.

25 5838. Effect of divorce.

26 5839. Revocation.

27 5840. Amendment.

28 5841. Relation of mental health care agent to court-appointed
29 guardian and other agents.

30 5842. Duties of attending physician and mental health care

1 provider.

2 5843. Construction.

3 5844. Conflicting mental health care powers of attorney.

4 5845. Validity.

5 § 5831. Short title of subchapter.

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

8 § 5832. Execution.

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

18 (b) Requirements.--A MENTAL HEALTH power of attorney must <—
19 be:

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

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

25 (c) Witnesses.--

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

29 (2) A mental health care provider and its agent may not
30 sign a MENTAL HEALTH power of attorney on behalf of and at <—

1 the direction of a principal if the mental health care
2 provider or agent provides mental health care services to the
3 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~~ 5511 (relating to ~~relation of~~ <—
21 ~~mental health care agent to court appointed guardian and~~
22 ~~other agents~~). APPOINTMENT OF GUARDIAN). <—

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

11 I understand that mental health care includes any care,
12 treatment, service or procedure to maintain, diagnose, treat
13 or provide for mental health, including any medication

14 program and therapeutic treatment. ~~Mental health care does~~ <—

15 ~~not include electroconvulsive therapy,~~ ELECTROCONVULSIVE <—

16 THERAPY MAY BE ADMINISTERED ONLY IF I HAVE SPECIFICALLY
17 CONSENTED TO IT IN THIS DOCUMENT. I WILL BE THE SUBJECT OF

18 laboratory trials or research ~~unless~~ ONLY IF specifically <—

19 provided for in this document. Mental health care does not
20 include psychosurgery or termination of parental rights.

21 I understand that my incapacity will be determined by
22 examination by a psychiatrist and one of the following:

23 another psychiatrist, psychologist, family physician,
24 attending physician or mental health treatment professional.

25 Whenever possible, one of the decision makers shall be one of
26 my treating professionals.

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

30 (Insert name of designated person)

1 Signed:
2 (My name, address, telephone number)
3 (Witnesses' signatures)
4 (Names, addresses, telephone numbers of witnesses)
5 Agent's acceptance:
6 I hereby accept designation as mental health care agent for
7 (Insert name of declarant)
8 Agent's signature:
9 (Insert name, address, telephone number of designated person)

10 B. Designation of alternative agent.

11 In the event that my first agent is unavailable or unable to
12 serve as my mental health care agent, I hereby designate and
13 appoint the following individual as my alternative mental
14 health care agent to make mental health care decisions for me
15 as authorized in this document:
16 (Insert name of designated person)

17 Signed:
18 (Witnesses' signatures)
19 (Names, addresses, telephone numbers of witnesses)

20 Alternative agent's acceptance:
21 I hereby accept designation as alternative mental health care
22 agent for
23 (Insert name of declarant)
24 Alternative agent's signature: .
25 (Insert name, address, telephone number)

26 C. When this power of attorney becomes effective.
27 This power of attorney will become 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)

D. Authority granted to my mental health care agent.

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

1. Treatment preferences.

(a) Choice of treatment facility.

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

(Insert name and address of facility)

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

(Insert name and address of facility)

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

(b) Preferences regarding medications for psychiatric treatment.

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

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

(List exception or limitation)

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

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

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

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

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

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

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

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

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

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

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 Limitations on release or disclosure of mental
7 health records.

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

<—

10 Other matters of importance.

11 E. Revocation.

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

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

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

<—

24 or

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

26 F. Termination.

27 I understand that this power of attorney will automatically
28 terminate two years from the date of execution unless I am
29 deemed incapable of making mental health care decisions at
30 the time the power of attorney would expire.

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

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

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

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

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

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

17 My signature

18 (My Name, address, telephone number)

19 Witnesses' signatures:

20 (Names, addresses, telephone numbers of witnesses)

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

24 Signature of person signing on my behalf:

25 Signature

26 (Name, address telephone number)

27 § 5834. Operation.

28 (a) When operative.--A mental health ~~care~~ power of attorney <—
29 shall become operative when:

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

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

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

8 (c) Duration.--A MENTAL HEALTH power of attorney shall be <—
9 valid until revoked by the principal or until two years after
10 the date of execution. If a MENTAL HEALTH power of attorney for <—
11 mental health treatment has been invoked and is in effect at the
12 specified date of expiration after its execution, the MENTAL <—
13 HEALTH power of attorney shall remain effective until the
14 principal is no longer incapable.

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

18 § 5835. Appointment of mental health care agents.

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

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

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

30 (2) An owner, operator or employee of a residential

1 facility in which the principal receives care.

2 § 5836. Authority of mental health care agent.

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

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

12 (c) Powers and duties only specifically granted.--Unless
13 specifically included in a mental health ~~care~~ power of attorney, <—
14 the agent shall not have the power to consent to
15 electroconvulsive therapy or to experimental procedures or
16 research.

17 (d) Mental health care decisions.--After consultation with
18 mental health care providers and after consideration of the
19 prognosis and acceptable alternatives regarding diagnosis,
20 treatments and side effects, a mental health care agent shall
21 make mental health care decisions in accordance with the mental
22 health care agent's understanding and interpretation of the
23 instructions given by the principal at a time when the principal
24 had the capacity to make and communicate mental health care
25 decisions. Instructions include a declaration made by the
26 principal and any clear written or verbal directions that cover
27 the situation presented. In the absence of instructions, the
28 mental health care agent shall make mental health care decisions
29 conforming with the mental health care agent's assessment of the
30 principal's preferences.

(e) Mental health care information.--

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

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

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

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

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

§ 5837. Removal of agent.

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

(1) Death or incapacity.

(2) Noncompliance with a MENTAL HEALTH power of attorney.

(3) Physical assault or threats of harm.

(4) Coercion.

(5) Voluntary withdrawal by the agent.

(6) Divorce.

(b) Notice of voluntary withdrawal.--

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

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

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

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

§ 5838. Effect of divorce.

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

§ 5839. Revocation.

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

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

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

2 (A) WHEN A MENTAL HEALTH POWER OF ATTORNEY MAY BE REVOKED.-- <—
3 A MENTAL HEALTH POWER OF ATTORNEY MAY BE REVOKED BY THE
4 PRINCIPAL AT ANY TIME, EITHER ORALLY OR IN WRITING IN WHOLE OR
5 IN PART, UNLESS THE PRINCIPAL HAS BEEN FOUND TO BE INCAPABLE OF
6 MAKING MENTAL HEALTH TREATMENT DECISIONS OR THE PRINCIPAL HAS
7 BEEN INVOLUNTARILY COMMITTED.

8 (B) CAPACITY TO REVOKE.--NOTWITHSTANDING SUBSECTION (A),
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 PRINCIPAL MAY REVOKE THE MENTAL
12 HEALTH POWER OF ATTORNEY ONLY IF FOUND TO BE CAPABLE OF MAKING
13 MENTAL HEALTH DECISIONS AFTER EXAMINATION BY A PSYCHIATRIST AND
14 ONE OF THE FOLLOWING: ANOTHER PSYCHIATRIST, A PSYCHOLOGIST, A
15 FAMILY PHYSICIAN, AN ATTENDING PHYSICIAN OR A MENTAL HEALTH
16 TREATMENT PROFESSIONAL. WHENEVER POSSIBLE, AT LEAST ONE OF THE
17 DECISION MAKERS SHALL BE A TREATING PROFESSIONAL OF THE
18 DECLARANT OR PRINCIPAL.

19 ~~(b)~~ (C) Effect of revocation.--A revocation shall be <—
20 effective upon communication to the attending physician or other
21 mental health care provider by the principal or a witness to the
22 revocation of the intent to revoke.

23 ~~(e)~~ (D) Mental health record.--The attending physician or <—
24 other mental health care provider shall make the revocation OR A <—
25 FINDING OF CAPACITY part of the mental health record of the
26 declarant.

27 ~~(d)~~ (E) Reliance on mental health care power of attorney.--A <—
28 physician or other mental health care provider may rely on the
29 effectiveness of a mental health care power of attorney unless <—
30 notified of its revocation.

1 ~~(e)~~ (F) Subsequent action by agent.--A mental health care <—
2 agent who has notice of the revocation of a mental health ~~care~~ <—
3 power of attorney may not make or attempt to make mental health
4 care decisions for the principal.

5 § 5840. Amendment.

6 While having the capacity to make mental health decisions, a
7 principal may amend a mental health ~~care~~ power of attorney by a <—
8 writing executed in accordance with the provisions of section
9 5832 (relating to execution).

10 § 5841. Relation of mental health care agent to court-appointed
11 guardian and other agents.

12 (a) Procedure.--

13 (1) Upon receipt of notice of a guardianship
14 proceeding, a provider shall notify the court, and the agent
15 at the guardianship proceeding, of the existence of a mental
16 health advance directive.

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

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

21 (1) If a principal who has executed a mental health ~~care~~ <—
22 power of attorney is later adjudicated an incapacitated
23 person, the MENTAL HEALTH power of attorney shall remain in <—
24 effect.

25 (2) The court shall give preference to allowing the
26 agent to continue making mental health care decisions as
27 provided in the mental health advance directive unless the
28 principal specified that the guardian has the power to
29 terminate, revoke, or suspend the MENTAL HEALTH power of <—
30 attorney in the advance directive.

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

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

13 § 5842. Duties of attending physician and mental health care
14 provider.

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

21 (b) Mental health record.--

22 (1) An attending physician or mental health care
23 provider who is given a mental health ~~care~~ power of attorney <—
24 shall arrange for the mental health ~~care~~ power of attorney or <—
25 a copy to be placed in the mental health record of the
26 principal.

27 (2) An attending physician or mental health care
28 provider to whom an amendment or revocation of a mental
29 health ~~care~~ power of attorney is communicated shall promptly <—
30 enter the information in the mental health record of the

principal and maintain a copy if one is furnished.

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

§ 5843. Construction.

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

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

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

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

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

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

(iii) Informed consent for mental health care.

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

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 (D) LEGAL REMEDIES.--NOTHING IN THIS ACT SHALL PROHIBIT AN

<—

1 INTERESTED PARTY FROM USING THE SAME LEGAL REMEDIES THAT ARE
2 OTHERWISE AVAILABLE TO SEEK A DETERMINATION FROM THE COURTS
3 INCLUDING INVALIDATION OF SOME OR ALL OF THE DECLARATION OR THE
4 MENTAL HEALTH POWER OF ATTORNEY, IN CASES OF POTENTIAL
5 IRREPARABLE HARM OR DEATH. THE COURTS SHALL HAVE 72 HOURS FROM
6 THE TIME OF APPLICATION FOR REMEDY IN WHICH TO MAKE THIS
7 DETERMINATION.

8 § 5844. Conflicting mental health ~~care~~ powers of attorney. <—

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

14 § 5845. Validity.

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

25 SECTION 2. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY <—
26 PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR
27 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
28 OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN
29 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

30 Section ~~2~~ 3. This act shall take effect in 60 days. <—