

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 492 Session of
2003

INTRODUCED BY GREENLEAF, LEMMOND, COSTA, M. WHITE, O'PAKE,
MOWERY, EARLL, C. WILLIAMS, THOMPSON AND RAFFERTY,
MARCH 14, 2003

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 14, 2003

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 20 (Decedents,
2 Estates and Fiduciaries) of the Pennsylvania Consolidated
3 Statutes, providing for living wills and health care powers
4 of attorney; further providing for implementation of out-of-
5 hospital nonresuscitation; and making conforming amendments.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 2713(e) of Title 18 of the Pennsylvania
9 Consolidated Statutes is amended to read:

10 § 2713. Neglect of care-dependent person.

11 * * *

12 (e) Treatment in conformance with care-dependent person's
13 right to accept or refuse services.--A caretaker or any other
14 individual or facility may offer an affirmative defense to
15 charges filed pursuant to this section if the caretaker,
16 individual or facility can demonstrate through a preponderance
17 of the evidence that the alleged violations result directly
18 from:

19 (1) the caretaker's, individual's or facility's lawful

1 compliance with a care-dependent person's [advance directive
2 for health care] living will as provided in 20 Pa.C.S. Ch. 54
3 (relating to [advance directive for] health care);

4 (2) the caretaker's, individual's or facility's lawful
5 compliance with the care-dependent person's written, signed
6 and witnessed instructions, composed when the care-dependent
7 person is competent as to the treatment he wishes to receive;

8 (3) the caretaker's, individual's or facility's lawful
9 compliance with the direction of the care-dependent person's
10 [attorney-in-fact] agent acting pursuant to a lawful durable
11 power of attorney; [or]

12 (4) the caretaker's, individual's or facility's lawful
13 compliance with a "Do Not Resuscitate" order written and
14 signed by the care-dependent person's [attending physician.]
15 primary physician; or

16 (5) the caretaker's, individual's or facility's lawful
17 compliance with the direction of the care-dependent person's
18 health care agent acting pursuant to a lawful health care
19 power of attorney.

20 * * *

21 Section 2. Section 711(22) of Title 20 is amended to read:

22 § 711. Mandatory exercise of jurisdiction through orphans'
23 court division in general.

24 Except as provided in section 712 (relating to nonmandatory
25 exercise of jurisdiction through the orphans' court division)
26 and section 713 (relating to special provisions for Philadelphia
27 County), the jurisdiction of the court of common pleas over the
28 following shall be exercised through its orphans' court
29 division:

30 * * *

(22) Agents.--All matters pertaining to the exercise of powers by agents acting under powers of attorney as provided in Chapter 56 (relating to powers of attorney) or in Subchapter C of Chapter 54 (relating to health care powers of attorney).

Section 3. Chapter 54 of Title 20 is repealed and Title 20 is amended by adding a chapter to read:

CHAPTER 54

HEALTH CARE

Subchapter

A. General Provisions

B. Living Wills

C. Health Care Powers of Attorney

D. Out-of-Hospital Nonresuscitation

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

5421. Applicability.

5422. Definitions.

5423. Legislative findings and intent.

5424. Compliance.

5425. Death not suicide or homicide.

5426. Life insurance.

5427. Health care instruments optional.

5428. Pregnancy.

5429. Liability.

5430. Penalties.

5431. Forms.

§ 5421. Applicability.

(a) General rule.--This chapter applies to living wills and

1 health care powers of attorney.

2 (b) Preservation of existing rights.--The provisions of this
3 chapter shall not impair or supersede any existing rights or
4 responsibilities not addressed in this chapter.

5 § 5422. Definitions.

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

9 "Health care." Any care, treatment, service or procedure to
10 maintain, diagnose, treat or provide for physical or mental
11 health, custodial or personal care, including any medication
12 program, therapeutical and surgical procedure and life-
13 sustaining treatment.

14 "Health care agent." An individual designated by a principal
15 in a health care power of attorney.

16 "Health care decision." A decision regarding an individual's
17 health care, including, but not limited to, the following:

18 (1) Selection and discharge of a health care provider.

19 (2) Approval or disapproval of a diagnostic test,
20 surgical procedure or program of medication.

21 (3) Directions to initiate, continue, withhold or
22 withdraw all forms of life-sustaining treatment, including
23 instructions not to resuscitate.

24 "Health care power of attorney." A writing made by a
25 principal designating an individual to make health care
26 decisions for the principal.

27 "Health care provider." A person who is licensed, certified
28 or otherwise authorized by the laws of this Commonwealth to
29 administer or provide health care in the ordinary course of
30 business or practice of a profession. The term includes

1 personnel recognized under the act of July 3, 1985 (P.L.164,
2 No.45), known as the Emergency Medical Services Act.

3 "Incompetent." Lacking sufficient capacity to make or
4 communicate decisions concerning oneself.

5 "Life-sustaining treatment." Any medical procedure or
6 intervention that, when administered to a principal who has been
7 determined to be in a terminal condition or permanently
8 unconscious, will serve only to prolong the process of dying or
9 maintain the individual in a state of permanent unconsciousness.
10 The term includes nutrition and hydration administered by
11 gastric tube or intravenously or any other artificial or
12 invasive means if the living will or health care power of
13 attorney of the individual so specifically provides.

14 "Living will." A writing made in accordance with this
15 chapter which expresses a principal's wishes and instructions
16 for health care and health care directions when the principal is
17 determined to be incompetent and in a terminal condition or in a
18 state of permanent unconsciousness.

19 "Medical command physician." A licensed physician who is
20 authorized to give medical command under the act of July 3, 1985
21 (P.L.164, No.45), known as the Emergency Medical Services Act.

22 "Permanently unconscious." A medical condition that has been
23 diagnosed in accordance with currently accepted medical
24 standards and with reasonable medical certainty as total and
25 irreversible loss of consciousness and capacity for interaction
26 with the environment. The term includes, without limitation, an
27 irreversible vegetative state or irreversible coma.

28 "Person." Any individual, corporation, partnership,
29 association or other similar entity, or any Federal, State or
30 local government or governmental agency.

1 "Primary physician." A physician designated by a principal
2 or the principal's agent to have primary responsibility for the
3 health care of the principal, or in the absence of a designation
4 or if the designated physician is not reasonably available, a
5 physician who undertakes that responsibility.

6 "Principal." An individual who executes a living will or a
7 health care power of attorney in accordance with this chapter.

8 "Reasonably available." Readily able to be contacted without
9 undue effort and willing and able to act in a timely manner
10 considering the urgency of the patient's health care needs.

11 "Terminal condition." An incurable and irreversible medical
12 condition in an advanced state caused by injury, disease or
13 physical illness which will, in the opinion of the primary
14 physician to a reasonable degree of medical certainty, result in
15 death regardless of the continued application of life-sustaining
16 treatment.

17 § 5423. Legislative findings and intent.

18 (a) Intent.--This chapter provides a statutory means for
19 competent adults to control their health care either directly
20 through instructions written in advance or indirectly through a
21 health care agent. Nothing in this chapter is intended to:

22 (1) condone, authorize or approve mercy killing,
23 euthanasia or aided suicide; or

24 (2) permit any affirmative or deliberate act or omission
25 to end life other than as defined in this chapter.

26 (b) Presumption not created.--This chapter does not create
27 any presumption regarding the intent of an individual who has
28 not executed a living will or health care power of attorney to
29 consent to the use or withholding of life-sustaining treatment
30 in the event of a terminal condition or state of permanent

1 unconsciousness.

2 (c) Findings in general.--The General Assembly finds that
3 individuals have a qualified right to make decisions relating to
4 their own health care. This right is subject to certain
5 interests of society, such as the maintenance of ethical
6 standards in the medical profession and the preservation and
7 protection of human life. Modern medical technological
8 procedures make possible the prolongation of human life beyond
9 natural limits. The application of some procedures to an
10 individual suffering a difficult and uncomfortable process of
11 dying may cause loss of patient dignity and secure only
12 continuation of a precarious and burdensome prolongation of
13 life.

14 § 5424. Compliance.

15 (a) Notification by primary physician or health care
16 provider.--If a primary physician or other health care provider
17 cannot in good conscience comply with a living will or health
18 care decision of a health care agent or if the policies of a
19 health care provider preclude compliance with a living will or
20 health care decision of a health care agent, the primary
21 physician or health care provider shall so inform the following:

22 (1) The principal, if the principal is competent.

23 (2) The substitute named in the living will, if the
24 principal is incompetent.

25 (3) The family, guardian or other representative of the
26 principal, if the principal is incompetent and a substitute
27 is not named in the living will.

28 (4) The health care agent of the principal.

29 (b) Transfer.--The primary physician or health care provider
30 under subsection (a) shall make every reasonable effort to

1 assist in the transfer of the principal to another physician or
2 health care provider who will comply with the living will or
3 health care decision of the health care agent.

4 (c) Employee or staff member of health care provider.--

5 (1) An employee or a staff member of a health care
6 provider may not be required to:

7 (i) Participate in the withholding or withdrawal of
8 life-sustaining treatment.

9 (ii) Comply with a health care decision of a health
10 care agent if the good conscience of the employee or
11 staff member dictates otherwise.

12 (2) A health care provider that is an employer may not
13 discharge or in any other manner discriminate against its
14 employee or staff member who informs the employer of either
15 of the following:

16 (i) A wish not to participate in the withholding or
17 withdrawal of life-sustaining treatment.

18 (ii) An unwillingness to comply with a health care
19 decision of a health care agent based on the good
20 conscience of the employee or staff member.

21 (3) A health care provider that is an employer may
22 require its employee or staff member to express in writing
23 the wishes or unwillingness of the employee or staff member
24 as set forth in this subsection.

25 (d) Liability.--If transfer under subsection (b) is
26 impossible, the provision of life-sustaining treatment to a
27 principal may not subject a primary physician or a health care
28 provider to criminal or civil liability or administrative
29 sanction for failure to carry out either the provisions of a
30 living will or a health care decision of a health care agent.

1 § 5425. Death not suicide or homicide.

2 The withholding or withdrawal of life-sustaining treatment
3 from a principal resulting in death, in accordance with the
4 provisions of this chapter, shall not, for any purpose,
5 constitute suicide or homicide.

6 § 5426. Life insurance.

7 The making of or failure to make a living will or health care
8 power of attorney in accordance with this chapter shall not
9 affect in any manner the sale, procurement or issuance of a
10 policy of life insurance nor shall it be deemed to modify the
11 terms of an existing policy of life insurance. No policy of life
12 insurance shall be legally impaired or invalidated in any manner
13 by the withholding or withdrawal of life-sustaining treatment
14 from an insured principal, notwithstanding a term of the policy
15 to the contrary.

16 § 5427. Health care instruments optional.

17 A health care provider, a health care service plan, a health
18 maintenance organization, an insurer issuing disability
19 insurance, a self-insured employee welfare benefit plan, a
20 nonprofit hospital plan and a Federal, State or local government
21 sponsored or operated program may not do the following:

22 (1) Require an individual to execute a living will or
23 health care power of attorney as a condition for being
24 insured for or receiving health care services.

25 (2) Charge an individual a different rate or fee whether
26 or not the individual executes or has executed a living will
27 or health care power of attorney.

28 § 5428. Pregnancy.

29 (a) Living wills and health care decisions.--Notwithstanding
30 the existence of a living will, a health care decision by a

1 health care agent or any other direction to the contrary, life-
2 sustaining treatment, nutrition and hydration shall be provided
3 to a pregnant patient who is incompetent and has a terminal
4 condition or who is permanently unconscious unless, to a
5 reasonable degree of medical certainty as certified on the
6 pregnant patient's medical record by the pregnant patient's
7 primary physician and an obstetrician who has examined the
8 pregnant patient, life-sustaining treatment, nutrition and
9 hydration:

10 (1) will not maintain the pregnant patient in such a way
11 as to permit the continuing development and live birth of the
12 unborn child;

13 (2) will be physically harmful to the pregnant patient;
14 or

15 (3) will cause pain to the pregnant patient which cannot
16 be alleviated by medication.

17 (b) Pregnancy test.--Nothing in this chapter shall require a
18 physician to perform a pregnancy test unless the physician has
19 reason to believe that the patient may be pregnant.

20 (c) Payment of expenses by Commonwealth.--

21 (1) Notwithstanding the existence of a living will, a
22 health care decision by a health care agent or any other
23 direction to the contrary, if treatment, nutrition and
24 hydration are provided to a pregnant patient who is
25 incompetent and has a terminal condition or who is
26 permanently unconscious, the Commonwealth shall pay all
27 usual, customary and reasonable expenses directly and
28 indirectly incurred by the pregnant patient to whom the
29 treatment, nutrition and hydration are provided.

30 (2) The Commonwealth shall have the right of subrogation

1 against all moneys paid by any third-party health insurer on
2 behalf of the pregnant patient.

3 (3) The expenditures incurred on behalf of the pregnant
4 patient constitute a grant, and a lien may not be placed upon
5 the property of the pregnant patient, her estate or her
6 heirs.

7 § 5429. Liability.

8 (a) General rule.--A health care provider or another person
9 that acts in good faith and consistent with this chapter may not
10 be subject to criminal or civil liability, discipline for
11 unprofessional conduct or administrative sanctions and may not
12 be found to have committed an act of unprofessional conduct as a
13 result of any of the following:

14 (1) Causing or participating in the initiating,
15 continuing, withholding or withdrawal of life-sustaining
16 treatment from a principal who has been determined to be in a
17 terminal condition or to be permanently unconscious and who
18 is incompetent, if the primary physician or other health care
19 provider has followed the wishes of the principal as
20 expressed in a living will made under this chapter.

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

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

30 (4) Complying with a health care power of attorney under

1 the assumption that it was valid when made and has not been
2 amended or revoked.

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

6 (b) Same effect as if dealing with principal.--Any primary
7 physician, health care provider and other person acting under
8 subsection (a) is protected and released to the same extent as
9 if dealing directly with a competent principal.

10 (c) Good faith of health care agent.--A health care agent
11 acting according to the terms of a health care power of attorney
12 may not be subject to civil or criminal liability for acting in
13 good faith for a principal or failing in good faith to act for a
14 principal.

15 § 5430. Penalties.

16 (a) Felonies of the third degree.--A person commits a felony
17 of the third degree if that person willfully:

18 (1) conceals, cancels, alters, defaces, obliterates or
19 damages a living will or health care power of attorney
20 without the consent of the principal;

21 (2) causes a person to execute a living will or health
22 care power of attorney under this chapter by undue influence,
23 fraud or duress; or

24 (3) falsifies or forges a living will or health care
25 power of attorney or any amendment or revocation thereof, the
26 result of which is a direct change in the health care
27 provided to the principal.

28 (b) Prosecution for criminal homicide.--A person shall be
29 subject to prosecution for criminal homicide as provided in 18
30 Pa.C.S. Ch. 25 (relating to criminal homicide), if the person

intends to cause the withholding or withdrawal of life-sustaining treatment contrary to the wishes of the principal and, because of that action, directly causes life-sustaining treatment to be withheld or withdrawn and death to be hastened and:

(1) falsifies or forges the living will or the health care power of attorney of another individual; or

(2) willfully conceals or withholds personal knowledge of a revocation of a living will or health care power of attorney under this chapter.

§ 5431. Forms.

(a) Form.--A living will and health care power of attorney may be in the forms provided under this chapter or in any other written form which contains the information required under Subchapters B (relating to living wills) and C (relating to health care powers of attorney).

(b) Combining forms.--A living will and health care power of attorney may be combined into one health care document.

SUBCHAPTER B

LIVING WILLS

Sec.

5441. Short title of subchapter.

5442. Execution.

5443. Form.

5444. When living will operative.

5445. Revocation.

5446. Emergency medical services.

5447. Validity.

§ 5441. Short title of subchapter.

This subchapter shall be known and may be cited as the Living

1 Will Act.

2 § 5442. Execution.

3 (a) Who may make.--An individual of sound mind may make a
4 living will governing the initiation, continuation, withholding
5 or withdrawal of life-sustaining treatment if the individual:

6 (1) is 18 years of age or older;

7 (2) has graduated from high school; or

8 (3) has married.

9 (b) Requirements.--A living will must be:

10 (1) dated and signed by the principal by signature or
11 mark or by another individual on behalf of and at the
12 direction of the principal; and

13 (2) witnessed by two individuals, each of whom is 18
14 years of age or older.

15 (c) Witnesses.--

16 (1) An individual who signs a living will on behalf of
17 and at the direction of a principal may not witness the
18 living will.

19 (2) A health care provider and its agent may not sign a
20 living will on behalf of and at the direction of a principal
21 if the health care provider or agent provides health care
22 services to the principal.

23 § 5443. Form.

24 A living will may be in the following form or any other
25 written form expressing the wishes of a principal regarding the
26 initiation, continuation, withholding or withdrawal of life-
27 sustaining treatment and may include other specific directions,
28 including, but not limited to, designation of another individual
29 to make health care decisions for the principal if the principal
30 is incompetent and determined to be either in a terminal

1 condition or permanently unconscious.

2 LIVING WILL

3 I,, born on (birth
4 date), being of sound mind, willfully and voluntarily make
5 this living will.

6 If I am not able to make an informed decision regarding
7 my health care, I direct my health care providers to follow
8 my instructions as set forth below. (Initial those statements
9 you wish to be included in the document and cross through
10 those statements that do not apply.)

11 If my death from a terminal condition is imminent as a
12 result of an injury, disease or physical illness, regardless
13 of the continued application of life-sustaining treatment,
14 and there is no reasonable expectation of my recovery, or if
15 I am determined to be permanently unconscious, then:

16 a. General instructions:

17 () I direct that my life not be extended by life-sustaining
18 procedures, including the administration of nutrition and
19 hydration artificially.

20 () I direct that my treatment be limited to measures that
21 keep me comfortable and relieve my pain, including any pain
22 which may occur as a result of the withholding or withdrawal
23 of life-sustaining treatment.

24 () I direct that my life not be extended by life-sustaining
25 procedures, except that if I am unable to take food by mouth,
26 I wish to receive nutrition and hydration artificially.

27 () I direct that, even in a terminal condition, I be given
28 all available medical treatment in accordance with accepted
29 health care standards.

30 () I direct that upon my death, I wish to make an

1 anatomical gift of all or part of my body. I wish to donate:

2 Any needed organs, tissues, or eyes.

3 Only the following organs, tissues or eyes:

4 () I authorize the use of my organs, tissues or eyes:

5 For transplantation

6 For therapy

7 For research

8 For medical education

9 For any purpose authorized by law.

10 () I understand that my estate will not be charged for any
11 costs associated with my decision to donate my organs,
12 tissues or eyes or the actual disposition of my organs,
13 tissues or eyes.

14 b. Additional instructions:

15 () I designate the following physician as my primary
16 physician:

17 Name of Primary Physician.....

18 Address and Telephone of Primary Physician.....

19

20 () If the physician I have designated above is not willing,
21 able or reasonably available to act as my primary physician,
22 I designate the following physician as my primary physician:

23 Name of Physician.....

24 Address and Telephone of Physician.....

25

26 () I designate the following individual to make medical
27 treatment decisions for me:

28 Name.....

29 Address and Telephone.....

30

1 () If the individual designated above is unable or
2 unwilling to serve as the designated individual, then I
3 designate the following individual:

4 Name.....
5 Address and Telephone.....
6

7 c. Revocation and execution:

8 () I understand that I may revoke this living will at any
9 time and in any manner, regardless of my mental or physical
10 condition. I understand that my revocation is effective upon
11 communication to my primary physician or other health care
12 provider, either by me or a witness to my revocation.

13 () By signing below, I indicate that I am competent to make
14 this living will and that I understand its purpose and
15 effect.

16 Date Signature of Principal
17 Address of Principal.....
18

19 This living will must be witnessed by two individuals,
20 each of whom is 18 years of age or older.

21 The principal signed or acknowledged signing the
22 foregoing living will in my presence and based upon personal
23 observation appears to be a competent individual.

24 Name and Address of Witness 1.....
25

26 Date.....

27 Name and Address of Witness 2.....
28

29 Date.....

30 REMINDER: Keep this document with your personal papers in a

1 safe place, but not in a safe deposit box. Give signed copies
2 to your doctors, family, close friends and health care agent,
3 if one is designated. Make sure your doctor is willing to
4 follow your wishes. This document should be part of your
5 medical record at your physician's office and at the facility
6 where you receive your care.

7 § 5444. When living will operative.

8 (a) When operative.--A living will becomes operative when:

9 (1) a copy is provided to the primary physician; and

10 (2) the principal is determined by the primary physician
11 to be incompetent and in a terminal condition or in a state
12 of permanent unconsciousness.

13 (b) Compliance.--When a living will becomes operative, the
14 primary physician and other health care providers shall act in
15 accordance with its provisions or comply with the transfer
16 provisions of section 5424 (relating to compliance).

17 (c) Invalidity of specific direction.--If a specific
18 direction in a living will is held to be invalid, the invalidity
19 does not negate other directions in the living will that can be
20 effected without the invalid direction.

21 (d) Medical record.--Any health care provider to whom a copy
22 of a living will is furnished shall make it a part of the
23 medical record of the living will and, if unwilling to comply
24 with the living will, promptly so advise the principal.

25 (e) Duration.--Unless a living will states a time of
26 termination, it is valid until revoked by the principal,
27 notwithstanding the lapse of time since its execution.

28 (f) Absence of living will.--If an individual does not make
29 a living will, a presumption does not arise regarding the intent
30 of the individual to consent to or to refuse the initiation,

1 continuation, withholding or withdrawal of life-sustaining
2 treatment.

3 (g) Duty of physician to confirm terminal condition.--
4 Without delay after a diagnosis that the principal is in a
5 terminal condition or in a state of permanent unconsciousness,
6 the primary physician shall certify in writing that the
7 principal is in a terminal condition or in a state of permanent
8 unconsciousness and arrange for the physical examination and
9 confirmation of the terminal condition or state of permanent
10 unconsciousness of the principal by a second physician.

11 § 5445. Revocation.

12 (a) When living will may be revoked.--A living will may be
13 revoked at any time and in any manner by the principal
14 regardless of the mental or physical condition of the principal.

15 (b) Effect of revocation.--A revocation is effective upon
16 communication to the primary physician or other health care
17 provider by the principal or a witness to the revocation.

18 (c) Medical record.--The primary physician or other health
19 care provider shall make the revocation part of the medical
20 record of the principal.

21 § 5446. Emergency medical services.

22 (a) General rule.--An emergency medical services provider
23 shall, in the course of providing care to a principal, at all
24 times comply with the instructions of an authorized medical
25 command physician to withhold or discontinue cardiopulmonary
26 resuscitation for a principal whose living will has become
27 operative under section 5444(a) (relating to when living will
28 operative).

29 (b) Applicability.--This section is applicable only in those
30 instances where an out-of-hospital DNR order is not in effect

1 under section 5474 (relating to orders, bracelets and
2 necklaces).

3 § 5447. Validity.

4 (a) Living will executed prior to effective date of
5 subchapter.--This subchapter does not limit the validity of a
6 living will executed prior to the effective date of this
7 subchapter.

8 (b) Living will executed in another state or jurisdiction.--
9 A living will executed in another state or jurisdiction and in
10 conformity with the laws of that state or jurisdiction shall be
11 considered valid in this Commonwealth, except to the extent that
12 the living will executed in another state or jurisdiction would
13 allow a principal to direct procedures inconsistent with the
14 laws of this Commonwealth.

15 SUBCHAPTER C

16 HEALTH CARE POWERS OF ATTORNEY

17 Sec.

18 5451. Short title of subchapter.

19 5452. Execution.

20 5453. Form.

21 5454. When health care power of attorney operative.

22 5455. Appointment of health care agents.

23 5456. Authority of health care agent.

24 5457. Countermand.

25 5458. Amendment.

26 5459. Effect of divorce.

27 5460. Revocation.

28 5461. Relation of health care agent to court-appointed
29 guardian and other agents.

30 5462. Duties of primary physician and health care provider.

1 5463. Effect on other State law.

2 5464. Conflicting health care powers of attorney.

3 5465. Validity.

4 § 5451. Short title of subchapter.

5 This subchapter shall be known and may be cited as the Health
6 Care Powers of Attorney Act.

7 § 5452. Execution.

8 (a) Who may make.--An individual of sound mind may make a
9 health care power of attorney if the individual:

10 (1) is 18 years of age or older;

11 (2) has graduated from high school; or

12 (3) has married.

13 (b) Requirements.--A health care power of attorney must be:

14 (1) dated and signed by the principal by signature or
15 mark or by another on behalf of and at the direction of the
16 principal; and

17 (2) witnessed by two individuals, each of whom is 18
18 years of age or older.

19 (c) Witnesses.--

20 (1) An individual who signs a health care power of
21 attorney on behalf of and at the direction of a principal may
22 not witness the health care power of attorney.

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

27 § 5453. Form.

28 (a) Requirements.--A health care power of attorney must do
29 the following:

30 (1) Identify the principal and appoint the health care

1 agent.

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

5 (b) Optional provisions.--A health care power of attorney
6 may, but need not, do the following:

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

9 (2) Indicate the intent of the principal regarding the
10 initiation, continuation, withholding or withdrawal of life-
11 sustaining treatment.

12 (3) Indicate whether the principal wants tube feeding or
13 any other artificial or invasive form of nutrition or
14 hydration.

15 (4) Nominate a guardian of the person of the principal
16 as provided in section 5461 (relating to relation of health
17 care agent to court-appointed guardian and other agents).

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

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

26 HEALTH CARE POWER OF ATTORNEY

27 I,, being of sound mind,
28 willfully and voluntarily, make this health care power of
29 attorney.

30 I reside at.....

1 1. I appoint the following individual as my health care
2 agent to make health care decisions for me:

3 (Full name, address and telephone number).....
4

5 If this health care agent is unavailable or is unable or
6 unwilling to act as my agent, or if I revoke my agent's
7 authority, then I appoint the following individual to act as
8 my first alternate agent in this capacity:

9 (Full name, address and telephone number of first
10 alternate agent).....
11

12 If my first alternate agent is neither willing, able or
13 reasonably available to make a health care decision for me,
14 then I appoint the following individual to act as my second
15 alternate agent:

16 (Full name, address and telephone number of second
17 alternate agent).....
18

19 2. My health care agent has full power and authority to
20 make health care decisions for me, including the power to:

21 a. Request, receive and review any information, oral or
22 written, regarding my physical or mental health, including,
23 but not limited to, medical and hospital records, and consent
24 to disclosure of this information.

25 b. Employ and discharge my health care providers.

26 c. Authorize my admission to, discharge from, and
27 transfer to any hospital, hospice, nursing home, personal
28 care home or other health care-related facility.

29 d. Consent to the provision, withholding or withdrawal
30 of health care, including life-sustaining procedures as

provided in my living will, which is attached to this document.

3. The authority of my health care agent is subject to the following provisions and limitations:

.....
.....

4. My health care agent's authority becomes operative based on the option that I choose. I will initial the option that I choose.

a. () When my primary physician and a second physician determine that I lack sufficient capacity to make or communicate health care decisions regarding my health care.

b. () Immediately.

5. Agent's obligation: My agent is responsible for making health care decisions for me based on the health care instructions I give in this document and on my wishes as otherwise known to my health care agent. If my wishes are unknown or unclear, my agent is to make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my health care agent shall consider my personal values to the extent known to my agent and shall also consider the effect on me of a given treatment or course of treatment or from the withholding or withdrawal of a treatment or course of treatment.

6. I understand that regardless of my mental or physical capacity, I may countermand a health care decision made by my agent at any time and in any manner by personally informing my primary physician or health care provider, who will try to promptly inform my health care agent of my countermand. My

1 countermand shall not affect the authority of my health care
2 agent to make other health care decisions in accordance with
3 my health care power of attorney.

4 7. I understand that my health care agent shall not be
5 liable for the costs of health care based solely on this
6 authorization.

7 8. If a guardian of my person needs to be appointed for
8 me by a court, I nominate the health care agent as provided
9 in this form for consideration by the court. If that agent is
10 not willing, able or reasonably available to act as guardian,
11 I nominate the alternate agents as provided in this form for
12 consideration by the court.

13 9. I understand that while I am of sound mind I may
14 revoke my health care power of attorney either:

15 a. by a writing which is dated, signed and witnessed in
16 the same manner as this health care power of attorney; or

17 b. by personally informing my primary physician, health
18 care provider or health care agent that this health care
19 power of attorney is revoked.

20 By signing below, I indicate that I am competent to make
21 this health care power of attorney and I understand its
22 purpose and effect.

23 Date Signature of Principal

24 Address of Principal.....

25

26 This health care power of attorney must be witnessed by
27 two individuals, each of whom is 18 years of age or older.

28 The principal signed or acknowledged signing the
29 foregoing living will in my presence and based upon personal
30 observation appears to be a competent individual.

1 Name and Address of Witness 1.....
2
3 Date.....
4 Name and Address of Witness 2.....
5
6 Date.....

7 REMINDER: Keep this document with your personal papers in a
8 safe place, but not in a safe deposit box. Give signed copies
9 to your doctors, family, close friends and health care agent,
10 if one is designated. Make sure your doctor is willing to
11 follow your wishes. This document should be part of your
12 medical record at your physician's office and at the facility
13 where you receive your care.

14 § 5454. When health care power of attorney operative.

15 (a) When operative.--Unless otherwise specified in the
16 health care power of attorney, a health care power of attorney
17 becomes operative when:

18 (1) a copy is provided to the primary physician; and

19 (2) the primary physician determines that the principal
20 is unable to make or communicate health care decisions.

21 (b) When inoperative.--Unless otherwise specified in the
22 health care power of attorney, a health care power of attorney
23 becomes inoperative during such time as, in the determination of
24 the primary physician, the principal has the ability to make and
25 communicate health care decisions.

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

1 (d) Duration.--Unless the health care power of attorney
2 states a time of termination, it is valid until revoked by the
3 principal or the principal's guardian of the person,
4 notwithstanding the lapse of time since its execution.

5 (e) Court approval unnecessary.--A health care decision made
6 by a health care agent for a principal is effective without
7 court approval.

8 § 5455. Appointment of health care agents.

9 (a) Multiple and successor health care agents.--A principal
10 may appoint the following in a health care power of attorney:

11 (1) More than one health care agent who shall act
12 jointly unless the health care power of attorney provides
13 otherwise.

14 (2) One or more successor agents who shall serve in the
15 order named in the health care power of attorney, unless the
16 principal expressly directs to the contrary.

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

21 (1) The principal's primary physician or other health
22 care provider.

23 (2) An owner, operator or employee of a health care
24 provider in which the principal is receiving care.

25 § 5456. Authority of health care agent.

26 (a) Extent of authority.--Except as expressly provided
27 otherwise in a health care power of attorney and subject to
28 subsection (b), a health care agent shall have the authority to
29 make any health care decision and to exercise any right and
30 power regarding the principal's care, custody and health care

1 treatment that the principal could have made and exercised. The
2 health care agent's authority may extend beyond the principal's
3 death to make anatomical gifts, dispose of the remains and
4 consent to autopsies.

5 (b) Life-sustaining treatment decisions.--A life-sustaining
6 treatment decision made by a health care agent is subject to
7 this section and sections 5428 (relating to pregnancy), 5454
8 (relating to when health care power of attorney operative) and
9 5462(a) (relating to duties of primary physician and health care
10 provider).

11 (c) Health care decisions.--After consultation with health
12 care providers and after consideration of the prognosis and
13 acceptable medical alternatives regarding diagnosis, treatments
14 and side effects, the health care agent shall make health care
15 decisions in accordance with the health care agent's
16 understanding and interpretation of the instructions given by
17 the principal at a time when the principal had the capacity to
18 make and communicate health care decisions. Instructions include
19 a living will made by the principal and any clear written or
20 verbal directions that cover the situation presented. In the
21 absence of instructions, the health care agent shall make health
22 care decisions conforming with the health care agent's
23 assessment of the principal's preferences and values, including
24 religious and moral beliefs. If the health care agent does not
25 know enough about the principal's instructions, preferences and
26 values to decide accordingly, the health care agent shall act in
27 accordance with the health care agent's assessment of the
28 principal's best interests.

29 (d) Health care information.--

30 (1) Unless specifically provided otherwise in a health

1 care power of attorney, a health care agent has the same
2 rights and limitations as the principal to request, examine,
3 copy and consent or refuse to consent to the disclosure of
4 medical or other health care information.

5 (2) Disclosure of medical or other health care
6 information to a health care agent does not constitute a
7 waiver of any evidentiary privilege or of a right to assert
8 confidentiality. A health care provider that discloses such
9 information to a health care agent in good faith shall not be
10 liable for the disclosure. A health care agent may not
11 disclose health care information regarding the principal
12 except as is reasonably necessary to perform the agent's
13 obligations to the principal or as otherwise required by law.

14 § 5457. Countermand.

15 Regardless of the principal's mental or physical capacity, a
16 principal may countermand a health care decision made by the
17 principal's health care agent at any time and in any manner by
18 personally informing the primary physician or health care
19 provider. The primary physician or health care provider shall
20 make reasonable efforts to promptly inform the health care agent
21 of the countermand. A countermand shall not affect the authority
22 of the health care agent to make other health care decisions in
23 accordance with the health care power of attorney.

24 § 5458. Amendment.

25 While of sound mind, a principal may amend a health care
26 power of attorney by a writing executed in accordance with the
27 provisions of section 5452 (relating to execution). An amendment
28 may include the revocation in part of the health care power of
29 attorney or the designation of new or additional health care
30 agents.

1 § 5459. Effect of divorce.

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

10 § 5460. Revocation.

11 (a) When health care power of attorney may be revoked.--
12 While of sound mind, a principal may revoke a health care power
13 of attorney by a writing executed in accordance with the
14 provisions of section 5452 (relating to execution) or by
15 personally informing the primary physician, health care provider
16 or health care agent that the health care power of attorney is
17 revoked.

18 (b) Reliance on health care power of attorney.--A health
19 care provider may rely on the effectiveness of a health care
20 power of attorney unless notified of its revocation.

21 (c) Subsequent action by agent.--A health care agent,
22 knowing of the revocation of the health care power of attorney,
23 may not make or attempt to make health care decisions for the
24 principal.

25 § 5461. Relation of health care agent to court-appointed
26 guardian and other agents.

27 (a) Accountability of health care agent.--If a principal who
28 has executed a health care power of attorney is later
29 adjudicated an incapacitated person and a guardian of the person
30 to make health care decisions is appointed by a court, the

1 health care agent is accountable to the guardian as well as to
2 the principal. The guardian shall have the same power to revoke
3 or amend the health care power of attorney that the principal
4 would have if the principal were not incapacitated.

5 (b) Nomination of guardian of person.--In a health care
6 power of attorney, a principal may nominate a guardian of the
7 person for the principal for consideration by a court if
8 incapacity proceedings for the principal's person are thereafter
9 commenced. If a 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 (c) Reasonable expenses.--In fulfilling the health care
14 needs for a principal, a health care agent may incur reasonable
15 expenses, including the purchase of health care insurance, to
16 the extent the expenses are not otherwise covered by insurance
17 or other similar benefits. Payment for the expenses or
18 reimbursement to the health care agent for the expenses from the
19 principal's funds shall be made by either of the following:

20 (1) A guardian of the estate of the principal.

21 (2) An agent acting on behalf of the principal under a
22 power of attorney if the agent has the power to disburse the
23 funds of the principal.

24 § 5462. Duties of primary physician and health care provider.

25 (a) Duty to confirm terminal condition.--Without delay after
26 a diagnosis that a principal is in a terminal condition or in a
27 state of permanent unconsciousness, the primary physician shall
28 certify in writing that the principal is in a terminal condition
29 or in a state of permanent unconsciousness and arrange for the
30 physical examination and confirmation of the terminal condition

1 or state of permanent unconsciousness of the principal by a
2 second physician.

3 (b) Communication of health care decision.--Whenever
4 possible before implementing a health care decision made by a
5 health care agent, a primary physician or health care provider
6 shall promptly communicate to the principal the decision and the
7 identity of the person making the decision.

8 (c) Compliance with decisions of health care agent.--Subject
9 to any limitation specified in the health care power of
10 attorney, a primary physician or health care provider shall
11 comply with a health care decision made by a health care agent
12 to the same extent as if the decision had been made by the
13 principal. Health care necessary to preserve life shall be
14 provided to an individual who is neither in a terminal condition
15 nor permanently unconscious except if the individual is
16 competent and objects to such care or a health care agent
17 objects on behalf of the principal. In all circumstances, this
18 subsection shall be construed so as to be consistent with the
19 Americans with Disabilities Act of 1990 (Public Law 101-336, 104
20 Stat. 327).

21 (d) Medical record.--

22 (1) Any primary physician or health care provider who is
23 given a health care power of attorney shall arrange for the
24 health care power of attorney or a copy to be placed in the
25 medical record of the principal.

26 (2) Any primary physician or health care provider to
27 whom an amendment or revocation of a health care power of
28 attorney is communicated shall promptly enter the information
29 in the medical record of the principal and maintain a copy if
30 one is furnished.

1 (e) Record of determination.--Any primary physician who
2 determines that a principal is unable or has regained the
3 ability to make and communicate health care decisions or makes a
4 determination that affects the authority of a health care agent
5 shall enter the determination in the medical record of the
6 principal and, if possible, promptly inform the principal and
7 any health care agent of the determination.

8 § 5463. Effect on other State law.

9 (a) Mental health.--This subchapter does not affect the
10 requirements of other laws of this Commonwealth regarding
11 consent to observation, diagnosis, treatment or hospitalization
12 for a mental illness.

13 (b) Prohibited care.--This subchapter does not authorize a
14 health care agent to consent to any health care prohibited by
15 the laws of this Commonwealth.

16 (c) Consent.--This subchapter does not affect the laws of
17 this Commonwealth regarding any of the following:

18 (1) The standard of care of a health care provider
19 required in the administration of health care.

20 (2) When consent is required for health care.

21 (3) Informed consent for health care.

22 (4) Consent to health care in an emergency.

23 (d) Preservation of religious rights.--This subchapter does
24 not prevent a health care agent from consenting to health care
25 administered in good faith pursuant to religious beliefs of the
26 principal or from withholding consent to health care that is
27 contrary to religious beliefs of the principal.

28 (e) Rights of individuals.--This subchapter does not affect
29 the right of an individual to make health care decisions.

30 (f) Disclosure.--

1 (1) The disclosure requirements of section 5456(d)
2 (relating to authority of health care agent) supersede any
3 provision in any other State statute or regulation that
4 requires the principal to consent to disclosure or which
5 otherwise conflicts with section 5456(d), including, but not
6 limited to, the following:

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

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

13 (iii) Section 15 of the act of October 5, 1978
14 (P.L.1109, No.261), known as the Osteopathic Medical
15 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) Section 7 of the act of November 29, 1990
20 (P.L.585, No.148), known as the Confidentiality of HIV-
21 Related Information Act.

22 (2) The disclosure requirements under section 5456(d)
23 shall not apply to the extent that the disclosure would be
24 prohibited by Federal laws and implementing regulations.

25 § 5464. Conflicting health care powers of attorney.

26 If a provision of a health care power of attorney conflicts
27 with another provision of a health care power of attorney or
28 with a provision of a living will, the provision of the
29 instrument latest in date of execution shall prevail to the
30 extent of the conflict.

1 § 5465. Validity.

2 This subchapter does not limit the validity of a health care
3 power of attorney executed prior to the effective date of this
4 subchapter. A health care power of attorney executed in another
5 state or jurisdiction and in conformity with the laws of that
6 state or jurisdiction shall be considered valid in this
7 Commonwealth, except to the extent that the health care power of
8 attorney executed in another state or jurisdiction would allow a
9 health care agent to make a health care decision inconsistent
10 with the laws of this Commonwealth.

11 SUBCHAPTER D

12 OUT-OF-HOSPITAL NONRESUSCITATION

13 Sec.

14 5471. Short title of subchapter.

15 5472. Legislative findings and intent.

16 5473. Definitions.

17 5474. Orders, bracelets and necklaces.

18 5475. Revocation.

19 5476. Liability.

20 5477. Effect on suicide and life insurance.

21 5478. Order optional.

22 5479. Preservation of existing rights.

23 5480. Emergency medical services.

24 5481. Pregnancy.

25 5482. Penalties.

26 § 5471. Short title of subchapter.

27 This subchapter shall be known and may be cited as the Out-
28 of-Hospital Nonresuscitation Act.

29 § 5472. Legislative findings and intent.

30 The General Assembly finds and declares as follows:

1 (1) Although cardiopulmonary resuscitation has saved the
2 lives of individuals about to experience sudden, unexpected
3 death, present medical data indicates that cardiopulmonary
4 resuscitation rarely leads to prolonged survival in
5 individuals with terminal illnesses in whom death is
6 expected.

7 (2) In many circumstances, the performance of
8 cardiopulmonary resuscitation may cause infliction of
9 unwanted and unnecessary pain and suffering.

10 (3) Existing emergency medical services protocols may
11 require emergency medical services personnel to proceed to
12 cardiopulmonary resuscitation when an individual is found in
13 a cardiac or respiratory arrest even if the individual has
14 completed a living will or advance directive indicating that
15 the individual does not wish to receive cardiopulmonary
16 resuscitation.

17 (4) The administration of cardiopulmonary resuscitation
18 by emergency medical services personnel to an individual with
19 an out-of-hospital do-not-resuscitate order offends the
20 dignity of the individual and conflicts with standards of
21 accepted medical practice.

22 (5) This subchapter provides clear direction to
23 emergency medical services personnel and other health care
24 providers in regard to the performance of cardiopulmonary
25 resuscitation.

26 (6) Nothing in this subchapter is intended to condone,
27 authorize or approve mercy killing, euthanasia or aided
28 suicide or to permit any affirmative or deliberate act or
29 omission to end life other than as defined in this
30 subchapter.

1 § 5473. Definitions.

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

5 "Bracelet." An out-of-hospital do-not-resuscitate bracelet.

6 "Cardiopulmonary resuscitation." Cardiac compression,
7 invasive airway techniques, artificial ventilation,
8 defibrillation and other related procedures.

9 "Department." The Department of Health of the Commonwealth.

10 "DNR." Do not resuscitate.

11 "Emergency medical services provider." A health care
12 provider recognized under the act of July 3, 1985 (P.L.164,
13 No.45), known as the Emergency Medical Services Act. The term
14 includes those individuals recognized under 42 Pa.C.S. § 8331.2
15 (relating to good Samaritan civil immunity for use of automated
16 external defibrillator).

17 "EMS." Emergency medical services.

18 "Health care provider." A person who is licensed, certified
19 or otherwise authorized by the laws of this Commonwealth to
20 administer or provide health care in the ordinary course of
21 business or practice of a profession. The term includes
22 personnel recognized under the act of July 3, 1985 (P.L.164,
23 No.45), known as the Emergency Medical Services Act, and those
24 individuals recognized under 42 Pa.C.S. § 8331.2 (relating to
25 good Samaritan civil immunity for use of automated external
26 defibrillator).

27 "Invasive airway technique." Any advanced airway technique,
28 including endotracheal intubation.

29 "Life-sustaining treatment." Any medical procedure or
30 intervention that, when administered to a patient, will serve

1 only to prolong the process of dying or to maintain the patient
2 in a state of permanent unconsciousness. The term includes
3 nutrition and hydration administered by gastric tube or
4 intravenously or any other artificial or invasive means if the
5 order of the patient so specifically provides.

6 "Necklace." An out-of-hospital do-not-resuscitate necklace.

7 "Order." An out-of-hospital do-not-resuscitate order.

8 "Out-of-hospital do-not-resuscitate bracelet." A bracelet in
9 the standard format set forth in section 5474 (relating to
10 orders, bracelets and necklaces), supplied by the department and
11 issued by the primary physician, which may be worn at the
12 patient's option to notify emergency medical services providers
13 of the presence of an order.

14 "Out-of-hospital do-not-resuscitate necklace." A necklace in
15 the standard format set forth in section 5474 (relating to
16 orders, bracelets and necklaces), supplied by the department and
17 issued by the primary physician, which may be worn at the
18 patient's option to notify emergency medical services providers
19 of the presence of an order.

20 "Out-of-hospital do-not-resuscitate order." An order in the
21 standard format set forth in section 5474 (relating to orders,
22 bracelets and necklaces), supplied by the department and issued
23 by the primary physician, directing emergency medical services
24 providers to withhold cardiopulmonary resuscitation from the
25 patient in the event of respiratory or cardiac arrest.

26 "Out-of-hospital do-not-resuscitate patient." Any of the
27 following:

28 (1) An individual:

29 (i) who is in a terminal condition; and

30 (ii) who, pursuant to section 5474(a) (relating to

orders, bracelets and necklaces), possesses and in any manner displays or causes to be displayed for emergency medical services providers an apparently valid order, bracelet or necklace.

(2) A principal:

(i) whose living will has become operative under section 5444(a) (relating to when living will operative) if the living will:

(A) provides that no cardiopulmonary resuscitation shall be provided in the event of the patient's cardiac or respiratory arrest if principal becomes permanently unconscious;

(B) designates a surrogate to make that decision under those circumstances; and

(ii) who, pursuant to section 5474(a) (relating to orders, bracelets and necklaces) possesses and in any manner displays or causes to be displayed for emergency medical services providers an apparently valid order, bracelet or necklace.

"Patient." One of the following:

(1) An individual who is in a terminal condition.

(2) A principal whose living will has become operative under section 5444(a) (relating to when living will operative) if the living will does one of the following:

(i) Provides that no cardiopulmonary resuscitation shall be provided in the event of the patient's cardiac or respiratory arrest if the principal becomes permanently unconscious.

(ii) Designates a surrogate to make that decision under the circumstances set forth in subparagraph (i).

1 "Primary physician." A physician who has primary
2 responsibility for the treatment and care of a patient.
3 § 5474. Orders, bracelets and necklaces.

4 (a) Issuance.--A primary physician, upon the request of a
5 patient who is at least 18 years of age, has graduated from high
6 school, has married or is an emancipated minor, or the patient's
7 surrogate if the surrogate is so authorized, shall issue to the
8 patient an order and may issue at the request of the patient or
9 the patient's surrogate a bracelet or necklace supplied by the
10 department. The patient may, at the patient's option, wear the
11 bracelet or display the order or necklace to notify emergency
12 medical services providers of the patient's do-not-resuscitate
13 status.

14 (b) Format of order.--The department shall, with the advice
15 of the Pennsylvania Emergency Health Services Council and with
16 the assistance of the regional emergency medical services
17 councils, make available standard orders for issuance to
18 patients by primary physicians of this Commonwealth. The form of
19 the order shall contain, but not be limited to, the following:

20 PENNSYLVANIA OUT-OF-HOSPITAL

21 DO-NOT-RESUSCITATE ORDER

22 Patient's full legal name:

23 I, the undersigned, state that I am the primary
24 physician of the patient named above. The above-named
25 patient or the patient's surrogate has requested this
26 order, and I have made the determination that the patient
27 is eligible for an order and satisfies one of the
28 following:

29 _____ is in a terminal condition.

30 _____ is permanently unconscious and has a

1 living will directing that no cardiopulmonary
2 resuscitation be provided to the patient in the event of
3 the patient's cardiac or respiratory arrest.

4 _____ is permanently unconscious and has a
5 living will authorizing _____ to request an out-of-
6 hospital do-not-resuscitate order for the patient.

7 I direct any and all emergency medical services
8 personnel, commencing on the effective date of this
9 order, to withhold cardiopulmonary resuscitation (cardiac
10 compression, invasive airway techniques, artificial
11 ventilation, defibrillation and other related procedures)
12 from the patient in the event of the patient's
13 respiratory or cardiac arrest. I further direct such
14 personnel to provide to the patient other medical
15 interventions, such as intravenous fluids, oxygen or
16 other therapies necessary to provide comfort care or to
17 alleviate pain, unless directed otherwise by the patient
18 or the emergency medical services provider's authorized
19 medical command physician.

20 Signature of primary physician:

21 Printed name of primary physician:

22 Dated:

23 Primary physician's emergency telephone number:

24 Signature of patient (if capable of making informed
25 decisions):

26 I, the undersigned, hereby direct that in the event
27 of my cardiac and/or respiratory arrest efforts at
28 cardiopulmonary resuscitation not be initiated. I
29 understand that I may revoke these directions at any time
30 by giving verbal instructions to the emergency medical

1 services providers, by physical cancellation or
2 destruction of this form or my bracelet or necklace or by
3 simply not displaying this form or the bracelet or
4 necklace for my EMS caregivers.

5 Signature of surrogate (if patient is incapable of
6 making informed decisions):

7 I, the undersigned, hereby certify that I am
8 authorized to execute this order on the patient's behalf
9 by virtue of having been designated as the patient's
10 surrogate and/or by virtue of my relationship to the
11 patient (specify relationship: _____). I
12 hereby direct that in the event of the patient's cardiac
13 and/or respiratory arrest efforts at cardiopulmonary
14 resuscitation not be initiated.

15 (c) Format of bracelet.--The department shall, with the
16 advice of the Pennsylvania Emergency Health Services Council and
17 with the assistance of the regional emergency medical services
18 councils, make available standard bracelets for issuance to
19 patients by primary physicians. The bracelets shall be uniform
20 in design and shall, at a minimum, on the face clearly indicate
21 OUT-OF-HOSPITAL DNR and the name of the patient and primary
22 physician as well as the dated signature of the primary
23 physician.

24 (d) Format of necklace.--The department shall, with the
25 advice of the Pennsylvania Emergency Health Services Council and
26 with the assistance of the regional emergency medical services
27 councils, make available standard necklaces for issuance to
28 patients by primary physicians. The necklaces shall be uniform
29 in design and shall, at a minimum, on the face clearly indicate
30 OUT-OF-HOSPITAL DNR and the name of the patient and primary

1 physician as well as the dated signature of the primary
2 physician.

3 § 5475. Revocation.

4 (a) Patient.--If a patient has obtained an order, only the
5 patient may revoke the patient's DNR status.

6 (b) Surrogate.--If a surrogate has obtained an order, the
7 patient or the surrogate may revoke the patient's status.

8 (c) Manner.--Revocation under this section may be done at
9 any time without regard to the patient's physical or mental
10 condition and in any manner, including verbally or by destroying
11 or not displaying the order, bracelet or necklace.

12 § 5476. Liability.

13 (a) General rule.--No health care provider who, consistent
14 with this subchapter, causes or participates in the initiating,
15 continuing, withholding or withdrawal of life-sustaining
16 treatment or cardiopulmonary resuscitation from a patient shall,
17 as a result of such action, be subject to criminal or civil
18 liability or be found to have committed an act of unprofessional
19 conduct if the primary physician, emergency medical services
20 provider or health care provider has followed the patient's
21 expressed wishes in the form of a living will, order or
22 revocation executed pursuant to this subchapter.

23 (b) Absence of order, bracelet or necklace.--The absence of
24 an order, bracelet or necklace by a patient shall not give rise
25 to any presumption as to the intent of the patient to consent to
26 or to refuse the initiation, continuation or termination of
27 life-sustaining treatment.

28 § 5477. Effect on suicide and life insurance.

29 (a) Criminal effect.--The withholding or withdrawal of life-
30 sustaining treatment from a patient resulting in death in

1 accordance with the provisions of this subchapter shall not, for
2 any purpose, constitute suicide or homicide.

3 (b) Life insurance.--The making of or failure to make an
4 order in accordance with this subchapter shall not affect in any
5 manner the sale, procurement or issuance of a policy of life
6 insurance nor shall it be deemed to modify the terms of an
7 existing policy of life insurance. No policy of life insurance
8 shall be legally impaired or invalidated in any manner by the
9 withholding or withdrawal of life-sustaining treatment from an
10 insured patient, notwithstanding a term of the policy to the
11 contrary.

12 § 5478. Order optional.

13 A health care provider, a health care service plan, a health
14 maintenance organization, an insurer issuing disability
15 insurance, a self-insured employee welfare benefit plan, a
16 nonprofit hospital plan and a Federal, State or local government
17 sponsored or operated program may not do the following:

18 (1) Require any person to execute an order as a
19 condition for being insured for or receiving health care
20 services.

21 (2) Charge an individual a different rate or fee whether
22 or not the individual executes or has executed an order.

23 § 5479. Preservation of existing rights.

24 The provisions of this subchapter shall not impair or
25 supersede any existing rights or responsibilities not addressed
26 in this subchapter.

27 § 5480. Emergency medical services.

28 (a) Medical command instructions.--Notwithstanding the
29 absence of an order, bracelet or necklace pursuant to this
30 section, emergency medical services providers shall at all times

1 comply with the instructions of an authorized medical command
2 physician to withhold or discontinue resuscitation.

3 (b) Effect of order, bracelet or necklace.--

4 (1) Emergency medical services providers are authorized
5 to and shall comply with an order if made aware of the order
6 by examining a bracelet, a necklace or the order itself.

7 (2) Emergency medical services providers shall provide
8 other medical interventions necessary and appropriate to
9 provide comfort and alleviate pain, including intravenous
10 fluids, medications, oxygen and any other intervention
11 appropriate to the level of the certification of the
12 provider, unless otherwise directed by the patient or the
13 emergency medical services provider's authorized medical
14 command physician.

15 (3) As used in this subsection, the term "comply" means:

16 (i) to withhold cardiopulmonary resuscitation from
17 the patient in the event of respiratory or cardiac
18 arrest; or

19 (ii) to discontinue and cease cardiopulmonary
20 resuscitation in the event the emergency medical services
21 provider is presented with an order or discovers a
22 necklace or bracelet after initiating cardiopulmonary
23 resuscitation.

24 (c) Uncertainty regarding validity or applicability of
25 order, bracelet or necklace.--

26 (1) Emergency medical services providers who in good
27 faith are uncertain about the validity or applicability of an
28 order, bracelet or necklace shall render care in accordance
29 with their level of certification.

30 (2) Emergency medical services providers who act under

paragraph (1) shall not be subject to civil or criminal liability or administrative sanction for failure to comply with an order under this section.

(d) Recognition of other states' orders.--Emergency medical services or out-of-hospital DNR orders, bracelets or necklaces valid in states other than this Commonwealth shall be recognized in this Commonwealth to the extent that these orders, bracelets or necklaces are consistent with the laws of this Commonwealth. Emergency medical services providers shall act in accordance with the provisions of this section when encountering a patient with an apparently valid EMS or out-of-hospital DNR form, bracelet or necklace issued by another state. Emergency medical services providers acting in good faith under this section shall be entitled to the same immunities and protections that would otherwise be applicable.

§ 5481. Pregnancy.

(a) General rule.--Notwithstanding the existence of an order or direction to the contrary, life-sustaining treatment, cardiopulmonary resuscitation, nutrition and hydration shall be provided to a pregnant patient unless, to a reasonable degree of medical certainty as certified on the pregnant patient's medical record by the primary physician and an obstetrician who has examined the pregnant patient, life-sustaining treatment, nutrition and hydration:

(1) will not maintain the pregnant patient in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to the pregnant patient;
or

(3) will cause pain to the pregnant patient which cannot

1 be alleviated by medication.

2 (b) Pregnancy test.--Nothing in this section shall require a
3 physician to perform a pregnancy test unless the physician has
4 reason to believe that the patient may be pregnant.

5 (c) Payment of expenses by Commonwealth.--

6 (1) Notwithstanding the existence of an order or
7 direction to the contrary, if treatment, cardiopulmonary
8 resuscitation, nutrition or hydration are provided to a
9 pregnant patient, the Commonwealth shall pay all usual,
10 customary and reasonable expenses directly and indirectly
11 incurred by the pregnant patient to whom the treatment,
12 nutrition and hydration are provided.

13 (2) The Commonwealth shall have the right of subrogation
14 against all moneys paid by any third-party health insurer on
15 behalf of the pregnant patient.

16 (3) The expenditures incurred on behalf of the pregnant
17 patient shall constitute a grant, and a lien shall not be
18 placed upon the property of the pregnant patient, her estate
19 or her heirs.

20 § 5482. Penalties.

21 (a) Felonies of the third degree.--A person commits a felony
22 of the third degree if that person:

23 (1) conceals, cancels, defaces, obliterates or damages
24 the order, bracelet or necklace of another without the
25 consent of the patient;

26 (2) causes a person to execute an order, bracelet or
27 necklace under this chapter by undue influence, fraud or
28 duress; or

29 (3) falsifies or forges an order, bracelet or necklace,
30 the result of which is a direct change in the health care

provided to the patient.

(b) Prosecution for criminal homicide.--A person shall be subject to prosecution for criminal homicide as provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide), if the person intends to cause the withholding or withdrawal of life-sustaining treatment contrary to the wishes of a patient and, because of that action, directly causes life-sustaining treatment to be withheld or withdrawn and death to be hastened and:

(1) falsifies or forges an order, bracelet or necklace of another individual; or

(2) willfully conceals or withholds personal knowledge of a revocation of an order, bracelet or necklace under this chapter.

Section 4. Chapter 54A of Title 20 is repealed.

Section 5. Sections 5602(a)(8) and (9) and 5603(h) of Title 20 are repealed.

Section 6. (a) The repeal of the form of the declaration in 20 Pa.C.S. § 5424(b) shall not affect the validity of any declaration executed, pursuant to that form, before, on or after the effective date of this act.

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

Section 7. Nothing in this act is intended to affect or supersede the holdings in *In re Fiori*, 543 Pa. 592, 673 A.2d 905 (1996).

Section 8. The interim regulations published at 32

1 Pennsylvania Bulletin 6117 on December 14, 2002, shall continue,
2 except to the extent that they may be inconsistent with the
3 provisions of this act in which case such regulations shall be
4 amended by interim regulation to eliminate the inconsistency and
5 any such interim regulations shall not be subject to the act of
6 June 25, 1982 (P.L.633, No.181), known as the Regulatory Review
7 Act, or section 201 or 205 of the act of July 31, 1968 (P.L.769,
8 No.240), referred to as the Commonwealth Documents Law. The
9 interim regulations shall expire February 18, 2004, or when
10 final regulations are promulgated by the department, whichever
11 occurs first. Final regulations shall be promulgated no later
12 than February 19, 2004.

13 Section 9. Section 6 of the act of June 19, 2002 (P.L.409,
14 No.59), entitled "An act amending Title 20 (Decedents, Estates
15 and Fiduciaries) of the Pennsylvania Consolidated Statutes,
16 further providing for advance directives for health care, for
17 definitions and for emergency medical services; and providing
18 for out-of-hospital nonresuscitation," is repealed.

19 Section 10. This act shall take effect as follows:

20 (1) The following provisions shall take effect
21 immediately:

22 (i) The addition of 20 Pa.C.S. Ch. 54 Subch. D.

23 (ii) Sections 4, 8 and 9 of this act.

24 (iii) This section.

25 (2) The remainder of this act shall take effect in 60
26 days.