

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 967

Short Title: Living Wills Clarified.

(Public)

Sponsors: Representatives Gamble; and Green.

Referred to: Judiciary II.

April 15, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DECLARATION OF THE RIGHT TO A NATURAL DEATH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-321 reads as rewritten:

"§ 90-321. Right to a natural death.

(a) As used in this Article the term:

- (1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);
- (2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;
- (3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina;
- (4) 'Persistent vegetative state' is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of ~~time~~-time;
- (5) 'Terminal condition' means an incurable or irrevocable condition that, without the administration of extraordinary means, will, in the opinion of the attending physician, result in death within a relatively short time.

1 (b) If a person has declared, in accordance with subsection (c) below, a desire
2 that ~~his~~the person's life not be prolonged by extraordinary means or by artificial
3 nutrition or hydration, regardless of whether administered through an invasive medical
4 procedure, and the declaration has not been revoked in accordance with subsection (e);
5 and

6 (1) It is determined by the attending physician that the declarant's present
7 condition is

8 a. Terminal; ~~and~~

9 ~~b. Incurable; or~~

10 ~~e.~~ Diagnosed as a persistent vegetative state; and

11 (2) There is confirmation of the declarant's present condition as set out
12 above in subdivision (b)(1) by a physician other than the attending
13 physician;

14 then extraordinary means or artificial nutrition or hydration, regardless of whether
15 administered through an invasive medical procedure, as specified by the declarant, may
16 be withheld or discontinued upon the direction and under the supervision of the
17 attending physician.

18 (c) The attending physician may rely upon a signed, ~~witnessed, dated and proved~~
19 witnessed or proved, and dated declaration:

20 (1) Which expresses a desire of the declarant that extraordinary means or
21 artificial nutrition or ~~hydration~~hydration, regardless of whether
22 administered through an invasive medical procedure, not be used to
23 prolong ~~his~~life if histhe declarant's condition is determined to be
24 ~~terminal and incurable~~, terminal, or if the declarant is diagnosed as being
25 in a persistent vegetative state; and

26 (2) Which states that the declarant is aware that the declaration authorizes
27 a physician to withhold or discontinue the extraordinary means or
28 artificial nutrition or ~~hydration~~; regardless of whether administered
29 through an invasive medical procedure; and

30 (3) Which has been signed by the declarant in the presence of two
31 witnesses who believe the declarant to be of sound mind and who state
32 that they (i) are not related within the third degree to the declarant or to
33 the declarant's spouse, (ii) do not know or have a reasonable
34 expectation that they would be entitled to any portion of the estate of
35 the declarant upon ~~his~~the declarant's death under any will of the
36 declarant or codicil thereto then existing or under the Intestate
37 Succession Act as it then provides, (iii) are not the attending physician,
38 or an employee of the attending physician, ~~or an employee of a health~~
39 ~~facility in which the declarant is a patient, or an employee of a nursing home~~
40 ~~or any group care home in which the declarant resides~~, and (iv) do not
41 have a claim against any portion of the estate of the declarant at the
42 time of the declaration; ~~and or~~

1 (4) Which has been proved before a clerk or assistant clerk of superior
 2 court, or a notary public who certifies substantially as set out in
 3 subsection (d) below.

4 (d) The following form is specifically determined to meet the requirements
 5 above:

6

7 **'DECLARATION OF A DESIRE FOR A NATURAL DEATH'**

8

9 'I,, being of sound mind, desire that, as specified below, my life not be
 10 prolonged by extraordinary means or by artificial nutrition or ~~hydration~~hydration,
 11 regardless of whether administered through an invasive medical procedure, if my
 12 condition is determined to be terminal ~~and incurable~~ or if I am diagnosed as being in a
 13 persistent vegetative state. I am aware and understand that this writing authorizes a
 14 physician to withhold or discontinue extraordinary means or artificial nutrition or
 15 hydration, regardless of whether administered through an invasive medical procedure, in
 16 accordance with my specifications set forth below:

17 (Initial any of the following, as desired):

18

19 '..... If my condition is determined to be ~~terminal~~
 20 ~~and incurable,~~ terminal, I authorize the following:

21

22 My physician may withhold or discontinue
 23 extraordinary means only.

24

25 In addition to withholding or discontinuing
 26 extraordinary means if such means are necessary, my
 27 physician may withhold or discontinue either artificial
 28 nutrition or hydration, regardless of whether
 29 administered through an invasive medical procedure,
 30 or both.

31

32 '..... If my physician determines that I am in a persistent
 33 vegetative state, I authorize the following:

34

35 My physician may withhold or discontinue
 36 extraordinary means only.

37

38 In addition to withholding or discontinuing
 39 extraordinary means if such means are necessary, my
 40 physician may withhold or discontinue either artificial
 41 nutrition or hydration, regardless of whether
 42 administered through an invasive medical procedure,
 43 or both.

44

1 If I have executed a Health Care Power of Attorney pursuant to Article 3 of Chapter
2 32A of the General Statutes in addition to making out this Declaration, I wish

3 Declaration

4 Power of Attorney

5 to control in the event of any conflict.

6 'This theday of.....

7 Signature.....

8

9 If the Declaration is signed in the presence of two witnesses pursuant to subdivision
10 (3) of subsection (c) of this section, the following form shall be used:

11 'I hereby state that the declarant,....., being of sound mind signed the above
12 declaration in my presence and that I am not related to the declarant by blood or
13 marriage and that I do not know or have a reasonable expectation that I would be
14 entitled to any portion of the estate of the declarant under any existing will or codicil of
15 the declarant or as an heir under the Intestate Succession Act if the declarant died on
16 this date without a will. I also state that I am not the declarant's attending physician or
17 an employee of the declarant's attending physician, or an employee of a health facility in
18 which the declarant is a patient or an employee of a nursing home or any group care home
19 where the declarant resides. physician. I further state that I do not now have any claim
20 against the declarant.

21 Witness

22 Witness'

23

24 ~~The clerk or the assistant clerk, or a notary public may, upon proper proof, certify~~
25 ~~the declaration as follows:~~

26

27 **'CERTIFICATE'**

28 'I,, Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one
29 as appropriate) forCounty hereby certify
30 that....., the declarant, appeared before me and swore to me and to the
31 witnesses in my presence that this instrument is his Declaration Of A Desire For A
32 Natural Death, and that he had willingly and voluntarily made and executed it as his free
33 act and deed for the purposes expressed in it.

34 'I further certify that and, witnesses, appeared before me and
35 swore that they witnessed, declarant, sign the attached declaration, believing
36 him to be of sound mind; and also swore that at the time they witnessed the declaration
37 (i) they were not related within the third degree to the declarant or to the
38 declarant's spouse, and (ii) they did not know or have a reasonable expectation that they
39 would be entitled to any portion of the estate of the declarant upon the declarant's death
40 under any will of the declarant or codicil thereto then existing or under the Intestate
41 Succession Act as it provides at that time, and (iii) they were not a physician attending
42 the declarant or an employee of an attending physician or an employee of a health
43 facility in which the declarant was a patient or an employee of a nursing home or any
44 group care home in which the declarant resided, and (iv) they did not have a claim

1 against the declarant. I further certify that I am satisfied as to the genuineness and due
2 execution of the declaration.

3 'This the day of

4 Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as
5 appropriate) for the County of"

6
7 The above declaration may be proved by the clerk or the assistant clerk, or a notary
8 public in the following manner:

- 9 (1) Upon the testimony of the two witnesses; or
- 10 (2) If the testimony of only one witness is available, then
 - 11 a. Upon the testimony of such witness, and
 - 12 b. Upon proof of the handwriting of the witness who is dead or
 - 13 whose testimony is otherwise unavailable, and
 - 14 c. Upon proof of the handwriting of the declarant, unless he
 - 15 signed by his mark; or upon proof of such other circumstances
 - 16 as will satisfy the clerk or assistant clerk of the superior court,
 - 17 or a notary public as to the genuineness and due execution of
 - 18 the declaration.
- 19 (3) If the testimony of none of the witnesses is available, such declaration
20 may be proved by the clerk or assistant clerk, or a notary public
 - 21 a. Upon proof of the handwriting of the two witnesses whose
 - 22 testimony is unavailable, and
 - 23 b. Upon compliance with paragraph c of subdivision (2) above.

24 Due execution may be established, where the evidence required above is
25 unavoidably lacking or inadequate, by testimony of other competent witnesses as to the
26 requisite facts.

27 The testimony of a witness is unavailable within the meaning of this subsection
28 when the witness is dead, out of the State, not to be found within the State, insane or
29 otherwise incompetent, physically unable to testify or refuses to testify.

30 If the testimony of one or both of the witnesses is not available the clerk or the
31 assistant clerk, or a notary public or superior court may, upon proper proof, certify the
32 declaration as follows:

33 The clerk or assistant clerk of superior court or a notary public may, upon the proper
34 proof, certify the declaration pursuant to subdivision (4) of subsection (c) of this
35 section as follows:

36
37 **'CERTIFICATE'**

38
39 'I, Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public
40 (circle one as appropriate) of..... County hereby certify that based upon the evidence
41 before me I am satisfied as to the genuineness and due execution of the attached
42 declaration by, declarant, and that the declarant's signature was witnessed
43 by....., and, who at the time of the declaration met the qualifications of G.S. 90-
44 321(e)(3): declarant.

1 'This the day of,

2

3 Clerk (Assistant Clerk) of Superior Court or
4 Notary Public (circle one as appropriate) for
5 County.'

6 The clerk, assistant clerk, or notary public may consider the Declaration proved
7 upon proof of the handwriting of the declarant, or upon proof of the declarant's mark, or
8 upon proof of any other circumstances as will satisfy the clerk, assistant clerk, or notary
9 public as to the genuineness and due execution of the Declaration.

10 (e) The above declaration may be revoked by the declarant, in any manner by
11 which he is able to communicate his intent to revoke, without regard to his mental or
12 physical condition. Such revocation shall become effective only upon communication to
13 the attending physician by the declarant or by an individual acting on behalf of the
14 declarant.

15 (f) The execution and consummation of declarations made in accordance with
16 subsection (c) shall not constitute suicide for any purpose.

17 (g) No person shall be required to sign a declaration in accordance with
18 subsection (c) as a condition for becoming insured under any insurance contract or for
19 receiving any medical treatment.

20 (h) The withholding or discontinuance of extraordinary means and/or the
21 withholding or discontinuance of either artificial nutrition or hydration, regardless of
22 whether administered through an invasive medical procedure, or both in accordance
23 with this section shall not be considered the cause of death for any civil or criminal
24 purposes nor shall it be considered unprofessional conduct. Any person, institution or
25 facility against whom criminal or civil liability is asserted because of conduct in
26 compliance with this section may interpose this section as a defense.

27 (i) Any certificate in the form provided by this section prior to July 1, 1979, shall
28 continue to be valid.

29 (j) The form provided by this section may be combined with or incorporated into
30 a health care power of attorney form meeting the requirements of Article 3 of Chapter
31 32A of the General Statutes; provided, however, that the resulting form shall be signed,
32 witnessed, and proved in accordance with the provisions of this section. In the event
33 that the Declaration and the health care power of attorney conflict, the declarant's
34 selection in the Declaration on which should control shall be followed."

35 Sec. 2. The Medical Care Commission shall ensure that Declaration of a
36 Desire for a Natural Death forms are available in all doctors' offices, hospitals, nursing
37 homes, domiciliary care facilities, and in any other health care institutions that it
38 regulates. The Commission shall also ensure that all patients of these health care
39 providers have their rights to make a Declaration adequately explained to them and have
40 adequate aid in filling out the forms.

41 Sec. 3. This act becomes effective July 1, 1993. Forms and procedures
42 authorized before the effective date of this act remain in full force and effect unless in
43 conflict with this act, in which case this act controls or unless changes by rule of the
44 Medical Care Commission in accordance with this act's mandate.