Article 23.

Right to Natural Death; Brain Death.

§ 90-320. General purpose of Article.

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or the patient's representative has the fundamental right to control the decisions relating to the rendering of the patient's own medical care, including the decision to have life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or the patient's representative may exercise these rights. A military advanced medical directive executed in accordance with 10 U.S.C. § 1044 or other applicable law is valid in this State.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative. (1977, c. 815; 1979, c. 715, s. 1; 1983, c. 313, s. 1; 2007-502, s. 10.)

§ 90-321. Right to a natural death.

(a) The following definitions apply in this Article:

(1) Declarant. – A person who has signed a declaration in accordance with subsection (c) of this section.

(1a) Declaration. – Except as provided in G.S. 90-321.1, any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section.

(2) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.

(2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

(3) Physician. – Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina.

(4) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.

(b) If a person has expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection (e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

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

then the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:
   a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or
   b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or
   c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the life-prolonging measures; and

(3) Except as provided in G.S. 90-321.1, that has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, licensed health care providers who are paid employees of the attending physician, paid employees of a health facility in which the declarant is a patient, or paid employees of a nursing home or any adult care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d1) of this section. A notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any adult care home in which the declarant resides.

(d) Repealed by Session Laws 2007-502, s. 11(b), effective October 1, 2007.

(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: *You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices.*

Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply *IF* my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____ *(Initial)* I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____ *(Initial)* I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____ *(Initial)* I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____ may withhold or withdraw life-prolonging measures.
(Initial)

_____ shall withhold or withdraw life-prolonging measures.
(Initial)

3. Exceptions – "Artificial Nutrition or Hydration"

NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____ *(Initial)* I *DO* want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.

_____ *(Initial)* I *DO* want to receive ONLY artificial hydration (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.

_____ *(Initial)* I *DO* want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____ *(Initial)* Follow Advance Directive: This Advance Directive will **override** instructions my health care agent gives about prolonging my life.

_____ *(Initial)* Follow Health Care Agent: My health care agent has authority to **override** this Advance Directive.

NOTE: **DO NOT INITIAL BOTH BLOCKS.** ***IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.***

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood or marriage, and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act, if the declarant died on this date without

a will. I also state that I am not the declarant's attending physician, nor a licensed health care provider who is (1) an employee of the declarant's attending physician, (2) nor an employee of the health facility in which the declarant is a patient, or (3) an employee of a nursing home or any adult care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of declarant)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(e) A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

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

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

(h) The withholding or discontinuance of life prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or

facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (*l*) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms.

(j) The form provided by this section may be combined with or incorporated into a health care power of attorney form meeting the requirements of Article 3 of Chapter 32A of the General Statutes; provided, however, that the resulting form shall be signed, witnessed, and proved in accordance with the provisions of this section.

(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration that expresses a desire of the declarant that life-prolonging measures not be used if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no duty on the attending physician to verify a declaration's genuineness or validity.

(*l*) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State. (1977, c. 815; 1979, c. 112, ss. 1-6; 1981, c. 848, ss. 1-3; 1991, c. 639, s. 3; 1993, c. 553, s. 28; 2001-455, s. 4; 2001-513, s. 30(b); 2007-502, ss. 11(a)-(e); 2020-3, s. 4.10(c).)

§ 90-321.1. Advanced directive for a natural death executed during a state of emergency.

(a) The requirement of G.S. 90-321 that an advanced directive for a natural death declaration be executed in the presence of two qualified witnesses shall be waived for all instruments executed on or after the effective date of this section and prior to termination of the state of emergency declared by Governor Roy Cooper in Executive Order No. 116, on March 10, 2020, as the same may be extended by any subsequent executive order, such that an instrument that is signed by the declarant, properly acknowledged before a notary public, and otherwise executed in compliance with the provisions of this Article, shall not be invalidated by the declarant's failure to execute the advanced directive for a natural death declaration in the presence of two qualified witnesses.

(b) Advanced directives for a natural death declaration executed without two qualified witnesses during the time period defined in subsection (a) of this section shall contain a short and plain statement indicating that the instrument was executed in accordance with the procedures of this section, which may but need not be cited by title or section number.

(c) This section shall expire at 12:01 A.M. on August 1, 2020; provided, however, all instruments made in accordance with this section and while this section is in effect shall remain effective and shall not need to be reaffirmed. (2020-3, s. 4.10(d).)

§ 90-322. Procedures for natural death in the absence of a declaration.

(a) If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

(1) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored or is being sustained by life-prolonging measures;

(4) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

then, life-prolonging measures may be withheld or discontinued in accordance with subsection (b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. 90-321, then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a).

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted.

(3) An agent, with powers to make health care decisions for the patient, appointed by the patient, to the extent of the authority granted.

(4) The patient's spouse.

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age.

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age.

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is reasonably available then at the discretion of the attending physician the life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. (1977, c. 815; 1979, c. 715, s. 2; 1981, c. 848, s. 5; 1983, c. 313, ss. 2-4; c. 768, s. 5.1; 1991, c. 639, s. 4; 1993, c. 553, s. 29; 2007-502, s. 12; 2017-153, s. 2.6; 2018-142, s. 35(b).)

§ 90-323. Death; determination by physician.

The determination that a person is dead shall be made by a physician licensed to practice medicine applying ordinary and accepted standards of medical practice. Brain death, defined as irreversible cessation of total brain function, may be used as a sole basis for the determination that a person has died, particularly when brain death occurs in the presence of artificially maintained respiratory and circulatory functions. This specific recognition of brain death as a criterion of death of the person shall not preclude the use of other medically recognized criteria for determining whether and when a person has died. (1979, c. 715, s. 3.)

§ 90-324. Reserved for future codification purposes.