

**FIRST ENGROSSMENT  
with House Amendments**

Fifty-ninth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2343**

Introduced by

Senators J. Lee, Fischer, Robinson

Representatives Gulleeson, Price, Svedjan

1 A BILL for an Act to create and enact a new section to chapter 23-06.5 of the North Dakota  
2 Century Code, relating to health care directives; to amend and reenact subsection 2 of section  
3 12.1-31-07 and sections 23-06.5-01, 23-06.5-02, 23-06.5-03, 23-06.5-05, 23-06.5-06,  
4 23-06.5-07, 23-06.5-08, 23-06.5-09, 23-06.5-10, 23-06.5-11, 23-06.5-12, 23-06.5-13,  
5 23-06.5-15, 23-06.5-16, 23-06.5-17, and 23-06.5-18 of the North Dakota Century Code, relating  
6 to health care decisions and directives; and to repeal chapter 23-06.4 of the North Dakota  
7 Century Code, relating to treatment declarations.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-31-07 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11 2. Except as provided for by chapters ~~23-06.4~~, 23-06.5, and 30.1-30, a caregiver who  
12 knowingly performs an act that causes a disabled adult's or vulnerable elderly  
13 adult's life to be endangered, health to be injured, or preexisting physical or mental  
14 condition to deteriorate, or a caregiver who fails to perform acts that the caregiver  
15 knows are necessary to maintain or preserve the life or health of the disabled adult  
16 or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable  
17 elderly adult's life to be endangered, health to be injured, or preexisting physical or  
18 mental condition to deteriorate, is guilty of a class B felony.

19 **SECTION 2. AMENDMENT.** Section 23-06.5-01 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **23-06.5-01. Statement of purpose.** Every competent adult has the right and  
22 responsibility to make the decisions relating to the adult's own health care, including the  
23 decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to  
24 enable adults to retain control over their own ~~medical~~ health care during periods of incapacity

1 through health directives and the ~~prior~~ designation of an individual to make health care  
2 decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing,  
3 or permit an affirmative or deliberate act or omission to end life, other than to allow the natural  
4 process of dying.

5 **SECTION 3. AMENDMENT.** Section 23-06.5-02 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **23-06.5-02. Definitions.** In this chapter, unless the context otherwise requires:

- 8 1. "Agent" means an adult to whom authority to make health care decisions is  
9 delegated under a ~~durable power of attorney for health care~~ directive for the  
10 individual granting the power.
- 11 2. "Attending physician" means the physician, selected by or assigned to a patient,  
12 who has primary responsibility for the treatment and care of the patient.
- 13 3. "Capacity to make health care decisions" means the ability to understand and  
14 appreciate the nature and consequences of a health care decision, including the  
15 significant benefits and harms of and reasonable alternatives to any proposed  
16 health care, and the ability to communicate a health care decision.
- 17 4. ~~"Durable power of attorney for health care" means a document delegating to an~~  
18 ~~agent the authority to make health care decisions executed in accordance with the~~  
19 ~~provisions of this chapter.~~
- 20 5. "Health care decision" means consent to, refusal to consent to, withdrawal of  
21 consent to, or request for any care, treatment, service, or procedure to maintain,  
22 diagnose, or treat an individual's physical or mental condition, including:
  - 23 a. Selection and discharge of health care providers and institutions;
  - 24 b. Approval or disapproval of diagnostic tests, surgical procedures, programs of  
25 medication, and orders not to resuscitate;
  - 26 c. Directions to provide, withhold, or withdraw artificial nutrition and hydration  
27 and all other forms of health care; and
  - 28 d. Establishment of an individual's abode within or without the state and  
29 personal security safeguards for an individual, to the extent decisions on  
30 these matters relate to the health care needs of the individual.

- 1           5. "Health care directive" means a written instrument that complies with this chapter  
2                   and includes one or more health care instructions, a power of attorney for health  
3                   care, or both.
- 4           6. "Health care instruction" means an individual's direction concerning a health care  
5                   decision for the individual, including a written statement of the individual's values,  
6                   preferences, guidelines, or directions regarding health care directed to health care  
7                   providers, others assisting with health care, family members, an agent, or others.
- 8       6- 7. "Health care provider" means an individual or facility licensed, certified, or  
9           otherwise authorized or permitted by law to administer health care, for profit or  
10           otherwise, in the ordinary course of business or professional practice.
- 11       7- 8. "Long-term care facility" or "long-term care services provider" means a long-term  
12           care facility as defined in section 50-10.1-01.
- 13       8- 9. "Principal" means an adult who has executed a ~~durable power of attorney for~~  
14           health care directive.

15           **SECTION 4. AMENDMENT.** Section 23-06.5-03 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **23-06.5-03. ~~Scope and duration of authority~~ Health care directive.**

- 18           1. A principal may execute a health care directive. A health care directive may  
19                   include one or more health care instructions to health care providers, others  
20                   assisting with health care, family members, and a health care agent. A health care  
21                   directive may include a power of attorney to appoint an agent to make health care  
22                   decisions for the principal when the principal lacks the capacity to make health  
23                   care decisions. Subject to the provisions of this chapter and any express  
24                   limitations set forth by the principal in the ~~durable power of attorney for~~ health care  
25                   directive, the agent has the authority to make any and all health care decisions on  
26                   the principal's behalf that the principal could make.
- 27           2. After consultation with the attending physician and other health care providers, the  
28           agent shall make health care decisions:
- 29           a. In accordance with the agent's knowledge of the principal's wishes and  
30           religious or moral beliefs, as stated orally, or as contained in the ~~durable~~

- 1 ~~power of attorney for health care or in a declaration executed pursuant to~~  
2 ~~chapter 23-06.4 principal's health care directive; or~~
- 3 b. If the principal's wishes are unknown, in accordance with the agent's  
4 assessment of the principal's best interests. In determining the principal's  
5 best interests, the agent shall consider the principal's personal values to the  
6 extent known to the agent.
- 7 3. ~~Under a durable power of attorney for health care, A health care directive,~~  
8 including the agent's authority, is in effect only when the principal lacks capacity to  
9 make health care decisions, as certified in writing by the principal's attending  
10 physician and filed in the principal's medical record, and ceases to be effective  
11 upon a determination that the principal has recovered capacity.
- 12 4. The principal's attending physician shall make reasonable efforts to inform the  
13 principal of any proposed treatment, or of any proposal to withdraw or withhold  
14 treatment.
- 15 5. Nothing in this chapter permits an agent to consent to admission to a mental health  
16 facility or state institution for a period of more than forty-five days without a mental  
17 health proceeding or other court order, or to psychosurgery, abortion, or  
18 sterilization, unless the procedure is first approved by court order.

19 **SECTION 5. AMENDMENT.** Section 23-06.5-05 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **23-06.5-05. Health care directive requirements - Execution and witnesses.** ~~The~~  
22 ~~durable power of attorney for~~

- 23 1. To be legally sufficient in this state, a health care directive must:
- 24 a. Be in writing;
- 25 b. Be dated;
- 26 c. State the principal's name;
- 27 d. Be executed by a principal with capacity to do so with the signature of the  
28 principal or with the signature of another person authorized by the principal to  
29 sign on behalf of the principal;

- 1           e. Contain verification of the principal's signature or the signature of the person  
2                     authorized by the principal to sign on behalf of the principal, either by a notary  
3                     public or by witnesses as provided under this chapter; and
- 4           f. Include a health care instruction or a power of attorney for health care, or  
5                     both.
- 6           2. A health care directive must be signed by the principal and that signature must be  
7                     verified by a notary public or at least two or more subscribing witnesses who are at  
8                     least eighteen years of age. A person notarizing the document may be an  
9                     employee of a health care or long-term care provider providing direct care to the  
10                    principal. At least one witness to the execution of the document must not be a  
11                    health care or long-term care provider providing direct care to the principal or an  
12                    employee of a health care or long-term care provider providing direct care to the  
13                    principal on the date of execution. The notary public or any witness may not be, at  
14                    the time of execution, the agent, the principal's spouse or heir, a person related to  
15                    the principal by blood, marriage, or adoption, a person entitled to any part of the  
16                    estate of the principal upon the death of the principal under a will or deed in  
17                    existence or by operation of law, any other person who has, at the time of  
18                    execution, any claims against the estate of the principal, a person directly  
19                    financially responsible for the principal's medical care, or the attending physician of  
20                    the principal. If the principal is physically unable to sign, the ~~durable power of~~  
21                    ~~attorney for health care~~ directive may be signed by the principal's name being  
22                    written by some other person in the principal's presence and at the principal's  
23                    express direction.

24           **SECTION 6.** A new section to chapter 23-06.5 of the North Dakota Century Code is  
25           created and enacted as follows:

26           **Suggested health care directive form.** A health care directive may include provisions  
27           consistent with this chapter, including:

- 28           1. The designation of one or more alternate agents to act if the named agent is not  
29                     reasonably available to serve;

- 1           2. Directions to joint agents regarding the process or standards by which the agents  
2                   are to reach a health care decision for the principal, and a statement whether joint  
3                   agents may act independently of one another;
- 4           3. Limitations, if any, on the right of the agent or any alternate agents to receive,  
5                   review, obtain copies of, and consent to the disclosure of the principal's medical  
6                   records;
- 7           4. Limitations, if any, on the nomination of the agent as guardian under chapter  
8                   30.1-28;
- 9           5. A document of gift for the purpose of making an anatomical gift, as set forth in  
10                   chapter 23-06.2 or an amendment to, revocation of, or refusal to make an  
11                   anatomical gift;
- 12          6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on  
13                   the appointment of an agent; and
- 14          7. Health care instructions regarding artificially administered nutrition or hydration.

15           **SECTION 7. AMENDMENT.** Section 23-06.5-06 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **23-06.5-06. Acceptance of appointment - Withdrawal.** To be effective, the agent  
18 must accept the appointment in writing. Subject to the right of the agent to withdraw, the  
19 acceptance creates a ~~duty~~ authority for the agent to make health care decisions on behalf of  
20 the principal at such time as the principal becomes ~~incapable~~ incapacitated. Until the principal  
21 becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the principal.  
22 After the principal becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice  
23 to the attending physician. The attending physician shall cause the withdrawal to be recorded  
24 in the principal's medical record.

25           **SECTION 8. AMENDMENT.** Section 23-06.5-07 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **23-06.5-07. Revocation.**

- 28           1. A ~~durable power of attorney for~~ health care directive is revoked:
  - 29           a. By notification by the principal to the agent or a health care or long-term care
  - 30                   services provider orally, or in writing, or by any other act evidencing a specific
  - 31                   intent to revoke the ~~power~~ directive; or

- 1           b. By execution by the principal of a subsequent ~~durable power of attorney for~~  
2           health care directive.
- 3           2. A principal's health care or long-term care services provider who is informed of or  
4           provided with a revocation of a ~~durable power of attorney for health care~~ directive  
5           shall immediately record the revocation in the principal's medical record and notify  
6           the agent, if any, the attending physician, and staff responsible for the principal's  
7           care of the revocation.
- 8           3. ~~If~~ Unless otherwise provided in the health care directive, if the spouse is the  
9           principal's agent, the divorce of the principal and spouse revokes the appointment  
10          of the divorced spouse as the principal's agent.

11          **SECTION 9. AMENDMENT.** Section 23-06.5-08 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **23-06.5-08. Inspection and disclosure of medical information.** Subject to any  
14          limitations set forth in the ~~durable power of attorney for health care~~ directive by the principal, an  
15          agent whose authority is in effect may for the purpose of making health care decisions:

- 16          1. Request, review, and receive any information, oral or written, regarding the  
17          principal's physical or mental health, including medical and hospital records;
- 18          2. Execute any releases or other documents which may be required in order to obtain  
19          such medical information; and
- 20          3. Consent to the disclosure of such medical information.

21          **SECTION 10. AMENDMENT.** Section 23-06.5-09 of the North Dakota Century Code is  
22          amended and reenacted as follows:

23          **23-06.5-09. ~~Action by~~ Duties of provider.**

- 24          1. A principal's health care or long-term care services provider, and employees  
25          thereof, having knowledge of the principal's ~~durable power of attorney for health~~  
26          care directive, are bound to follow the ~~directives~~ health care decisions of the  
27          principal's designated agent or a health care instruction to the extent they are  
28          consistent with this chapter and the ~~durable power of attorney for health care~~  
29          directive.
- 30          2. ~~If because of a moral or other conflict with a specific directive given by the agent, a~~  
31          A principal's health care or long-term care services provider ~~finds it impossible to~~

- 1 ~~follow that directive, the provider has the duty to inform the agent and if possible~~  
2 ~~the principal, and may decline to comply with a health care decision of a principal's~~  
3 ~~designated agent or a health care instruction for reasons of conscience or other~~  
4 ~~conflict. A provider that declines to comply with a health care decision or~~  
5 ~~instruction shall take all reasonable steps to transfer care of the principal to~~  
6 ~~another health care provider who is willing to honor the agent's health care~~  
7 ~~decision, or instruction or directive, and shall provide continuing care to the~~  
8 ~~principal until a transfer can be effected.~~
- 9 3. This chapter does not require any physician or other health care provider to take  
10 any action contrary to reasonable medical standards.
- 11 4. This chapter does not affect the responsibility of the attending physician or other  
12 health care provider to provide treatment for a patient's comfort, care, or alleviation  
13 of pain.
- 14 5. Notwithstanding a contrary direction contained in a health care directive executed  
15 under this chapter, health care must be provided to a pregnant principal unless, to  
16 a reasonable degree of medical certainty as certified on the principal's medical  
17 record by the attending physician and an obstetrician who has examined the  
18 principal, such health care will not maintain the principal in such a way as to permit  
19 the continuing development and live birth of the unborn child or will be physically  
20 harmful or unreasonably painful to the principal or will prolong severe pain that  
21 cannot be alleviated by medication.
- 22 6. In the absence of a direction to the contrary contained in a health care directive  
23 prepared under this chapter, nothing in this chapter requires a physician to  
24 withhold, withdraw, or administer nutrition or hydration, or both, from or to the  
25 principal. Nutrition or hydration, or both, must be withdrawn, withheld, or  
26 administered, if the principal for whom the administration of nutrition or hydration is  
27 considered, has directed in a health care directive the principal's desire that  
28 nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health  
29 care directive prepared under this chapter does not indicate the principal's  
30 direction with respect to nutrition or hydration, nutrition or hydration, or both, may  
31 be withdrawn or withheld if the attending physician has determined that the

1           administration of nutrition or hydration is inappropriate because the nutrition or  
2           hydration cannot be physically assimilated by the principal or would be physically  
3           harmful or would cause unreasonable physical pain to the principal.

4           **SECTION 11. AMENDMENT.** Section 23-06.5-10 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **23-06.5-10. Freedom from influence.**

- 7           1. A health care provider, long-term care services provider, health care service plan,  
8           insurer issuing disability insurance, self-insured employee welfare benefit plan, or  
9           nonprofit hospital service plan may not charge a person a different rate or require  
10           any person to execute a ~~durable power of attorney for health care~~ directive as a  
11           condition of admission to a hospital or long-term care facility nor as a condition of  
12           being insured for, or receiving, health care or long-term care services. Health care  
13           or long-term care services may not be refused because a person has executed a  
14           ~~durable power of attorney for health care~~ directive.
- 15           2. ~~A durable power of attorney for health care~~ The appointment of an agent is not  
16           effective if, at the time of execution, the principal is a resident of a long-term care  
17           facility unless a recognized member of the clergy, an attorney licensed to practice  
18           in this state, or a person as may be designated by the department of human  
19           services or the district court for the county in which the facility is located, signs a  
20           statement affirming that the person has explained the nature and effect of the  
21           ~~durable power of attorney for health care~~ appointment to the principal or unless the  
22           principal acknowledges in writing that the principal has read ~~the explanation~~  
23           ~~prefacing the statutory form in section 23-06.5-17 or a similar~~ written explanation of  
24           the nature and effect of a ~~durable power of attorney for health care~~ the  
25           appointment. ~~It is the intent of this subsection to recognize that some residents of~~  
26           ~~long-term care facilities are insulated from a voluntary decisionmaking role, by~~  
27           ~~virtue of the custodial nature of their care, so as to require special assurance that~~  
28           ~~they are capable of willingly and voluntarily executing a durable power of attorney~~  
29           ~~for health care.~~
- 30           3. ~~A durable power of attorney for health care~~ The appointment of an agent is not  
31           effective if, at the time of execution, the principal is being admitted to or is a patient

1           in a hospital unless a person designated by the hospital or an attorney licensed to  
2           practice in this state signs a statement that the person has explained the nature  
3           and effect of the ~~durable power of attorney for health care~~ appointment to the  
4           principal or unless the principal acknowledges in writing that the principal has read  
5           the ~~explanation prefacing the statutory form in section 23-06.5-17~~ or a similar  
6           written explanation of the nature and effect of a ~~durable power of attorney for~~  
7           ~~health care~~ the appointment.

8           **SECTION 12. AMENDMENT.** Section 23-06.5-11 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **23-06.5-11. Reciprocity.** This chapter does not limit the enforceability of a ~~durable~~  
11           ~~power of attorney for health care~~ directive or similar instrument executed in another state or  
12           jurisdiction in compliance with the law of that state or jurisdiction.

13           **SECTION 13. AMENDMENT.** Section 23-06.5-12 of the North Dakota Century Code is  
14           amended and reenacted as follows:

15           **23-06.5-12. Immunity.**

- 16           1. A person acting as agent pursuant to a ~~durable power of attorney for health care~~  
17           directive or person authorized to provide informed consent pursuant to section  
18           23-12-13 may not be subjected to criminal or civil liability for making a health care  
19           decision in good faith pursuant to the ~~terms of the durable power of attorney for~~  
20           ~~health care and the provisions of this chapter~~ or section 23-12-13.
- 21           2. A health care or long-term care services provider, or any other person acting for  
22           the provider or under the provider's control may not be subjected to civil or criminal  
23           liability, or be deemed to have engaged in unprofessional conduct, for any act or  
24           intentional failure to act done in good faith and with ordinary care if the act or  
25           intentional failure to act is done pursuant to the dictates of ~~the durable power of~~  
26           ~~attorney for~~ a health care directive, the directives of the patient's agent, ~~and the~~ or  
27           other provisions of this chapter or section 23-12-13.
- 28           3. A health care provider who administers health care necessary to keep the principal  
29           alive, despite a health care decision of the agent to withhold or withdraw that  
30           health care, or a health care provider who withholds health care that the provider  
31           has determined to be contrary to reasonable medical standards, despite a health

- 1           care decision of the agent to provide the health care, may not be subjected to civil  
2           or criminal liability or be deemed to have engaged in unprofessional conduct if that  
3           health care provider promptly took all reasonable steps to:  
4           a.   Notify the agent of the health care provider's unwillingness to comply;  
5           b.   Document the notification in the principal's medical record; and  
6           c.   Arrange to transfer care of the principal to another health care provider willing  
7           to comply with the decision of the agent.

8           **SECTION 14. AMENDMENT.** Section 23-06.5-13 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **23-06.5-13. ~~Guardianship authority—Conflicting declaration~~ Presumptions and**  
11 **application.**

- 12           1.   Unless a court of competent jurisdiction determines otherwise, ~~a durable power of~~  
13           ~~attorney for health care~~ the appointment of an agent in a health care directive  
14           executed pursuant to this chapter takes precedence over any authority to make  
15           medical decisions granted to a guardian pursuant to chapter 30.1-28.  
16           2.   To the extent ~~a durable power of attorney for health care conflicts with a~~  
17           ~~declaration executed in accordance with chapter 23-06.4~~ that health care  
18           directives conflict, the instrument executed later in time controls.  
19           3.   The principal is presumed to have the capacity to execute a health care directive  
20           and to revoke a health care directive, absent clear and convincing evidence to the  
21           contrary.  
22           4.   A health care provider or agent may presume that a health care directive is legally  
23           sufficient absent actual knowledge to the contrary. A health care directive is  
24           presumed to be properly executed, absent clear and convincing evidence to the  
25           contrary.  
26           5.   An agent and a health care provider acting pursuant to the direction of an agent  
27           are presumed to be acting in good faith, absent clear and convincing evidence to  
28           the contrary.  
29           6.   A health care directive is presumed to remain in effect until the principal modifies  
30           or revokes it, absent clear and convincing evidence to the contrary.

- 1           7. This chapter does not create a presumption concerning the intention of an  
2           individual who has not executed a health care directive and does not impair or  
3           supersede any right or responsibility of an individual to consent, refuse to consent,  
4           or withdraw consent to health care on behalf of another in the absence of a health  
5           care directive.
- 6           8. A copy of a health care directive is presumed to be a true and accurate copy of the  
7           executed original, absent clear and convincing evidence to the contrary, and must  
8           be given the same effect as an original.
- 9           9. Death resulting from the withholding or withdrawal of health care pursuant to a  
10          health care directive in accordance with this chapter does not constitute, for any  
11          purpose, a suicide or homicide.
- 12          10. The making of a health care directive under this chapter does not affect in any  
13          manner the sale, procurement, or issuance of any policy of life insurance or  
14          annuity, nor does it affect, impair, or modify the terms of an existing policy of life  
15          insurance or annuity. A policy of life insurance or annuity is not legally impaired or  
16          invalidated in any manner by the withholding or withdrawal of health care from an  
17          insured principal, notwithstanding any term to the contrary.
- 18          11. A person may not prohibit or require the execution of a health care directive as a  
19          condition for being insured for, or receiving, health care services.
- 20          12. This chapter does not affect the right of a patient to make decisions regarding use  
21          of health care, so long as the patient is able to do so, or impair or supersede any  
22          right or responsibility that a person has to effect the provision, withholding, or  
23          withdrawal or health care.
- 24          13. Health care directives prepared under this chapter which direct the withholding of  
25          health care do not apply to emergency treatment performed in a prehospital  
26          situation.

27           **SECTION 15. AMENDMENT.** Section 23-06.5-15 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29           **23-06.5-15. Validity of previously executed durable powers of attorney or other**  
30 **directives.** A health care directive executed before the effective date of this Act, which  
31 complies with the law in effect at the time it was executed, including former chapter 23-06.4,

1 must be given effect pursuant to this chapter. This chapter does not affect the validity or  
2 enforceability of a durable powers power of attorney pertaining to for health care executed  
3 before ~~July 17, 1994~~ the effective date of this Act.

4 **SECTION 16. AMENDMENT.** Section 23-06.5-16 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **23-06.5-16. Use of statutory form.** The statutory health care directive form ~~of durable~~  
7 ~~power of attorney~~ described in section 23-06.5-17 may be used and is the preferred an optional  
8 form, but not a required form, by which a person may execute a ~~durable power of attorney for~~  
9 health care directive pursuant to this chapter. ~~It is known as "the statutory form of durable~~  
10 ~~power of attorney for health care".~~ Another form may be used if it complies with this chapter.

11 **SECTION 17. AMENDMENT.** Section 23-06.5-17 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **23-06.5-17. Statutory Optional health care directive form of durable power of**  
14 **attorney.** ~~The statutory form of durable power of attorney is as follows~~ following is an optional  
15 form of a health care directive and is not a required form:

16 STATUTORY FORM DURABLE POWER OF ATTORNEY FOR  
17 -HEALTH CARE WARNING TO PERSON  
18 -EXECUTING THIS DOCUMENT

19 ~~This is an important legal document that is authorized by the general laws of this state.~~  
20 ~~Before executing this document, you should know these important facts:~~

21 ~~You must be at least eighteen years of age for this document to be legally valid and~~  
22 ~~binding.~~

23 ~~This document gives the person you designate as your agent (the attorney in fact) the~~  
24 ~~power to make health care decisions for you. Your agent must act consistently with your~~  
25 ~~desires as stated in this document or otherwise made known.~~

26 ~~Except as you otherwise specify in this document, this document gives your agent the~~  
27 ~~power to consent to your doctor not giving treatment or stopping treatment necessary to keep~~  
28 ~~you alive.~~

29 ~~Notwithstanding this document, you have the right to make medical and other health~~  
30 ~~care decisions for yourself so long as you can give informed consent with respect to the~~  
31 ~~particular decision.~~



1 ~~treating health care provider, an operator of a long term care facility, or a~~  
2 ~~nonrelative employee of an operator of a long term care facility) as my attorney in~~  
3 ~~fact (agent) to make health care decisions for me as authorized in this document.~~  
4 ~~For the purposes of this document, "health care decision" means consent, refusal~~  
5 ~~of consent, or withdrawal of consent to any care, treatment, service, or procedure~~  
6 ~~to maintain, diagnose, or treat an individual's physical or mental condition.~~

7 ~~2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By~~  
8 ~~this document I intend to create a durable power of attorney for health care.~~

9 ~~3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations~~  
10 ~~in this document, I hereby grant to my agent full power and authority to make~~  
11 ~~health care decisions for me to the same extent that I could make such decisions~~  
12 ~~for myself if I had the capacity to do so. In exercising this authority, my agent shall~~  
13 ~~make health care decisions that are consistent with my desires as stated in this~~  
14 ~~document or otherwise made known to my agent, including my desires concerning~~  
15 ~~obtaining or refusing or withdrawing life prolonging care, treatment, services, and~~  
16 ~~procedures. (If you want to limit the authority of your agent to make health care~~  
17 ~~decisions for you, you can state the limitations in paragraph 4 below. You can~~  
18 ~~indicate your desires by including a statement of your desires in the same~~  
19 ~~paragraph.)~~

20 ~~4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your~~  
21 ~~agent must make health care decisions that are consistent with your known~~  
22 ~~desires. You can, but are not required to, state your desires in the space provided~~  
23 ~~below. You should consider whether you want to include a statement of your~~  
24 ~~desires concerning life prolonging care, treatment, services, and procedures. You~~  
25 ~~can also include a statement of your desires concerning other matters relating to~~  
26 ~~your health care. You can also make your desires known to your agent by~~  
27 ~~discussing your desires with your agent or by some other means. If there are any~~  
28 ~~types of treatment that you do not want to be used, you should state them in the~~  
29 ~~space below. If you want to limit in any other way the authority given your agent~~  
30 ~~by this document, you should state the limits in the space below. If you do not~~

1 ~~state any limits, your agent will have broad powers to make health care decisions~~  
2 ~~for you, except to the extent that there are limits provided by law.)~~

3 ~~In exercising the authority under this durable power of attorney for health~~  
4 ~~care, my agent shall act consistently with my desires as stated below and is~~  
5 ~~subject to the special provisions and limitations stated below:~~

6 a. ~~Statement of desires concerning life-prolonging care, treatment, services, and~~  
7 ~~procedures:~~

8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 b. ~~Additional statement of desires, special provisions, and limitations regarding~~  
12 ~~health care decisions:~~

13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_

16 ~~(You may attach additional pages if you need more space to complete your~~  
17 ~~statement. If you attach additional pages, you must date and sign EACH of~~  
18 ~~the additional pages at the same time you date and sign this document.) If~~  
19 ~~you wish to make a gift of any bodily organ you may do so pursuant to North~~  
20 ~~Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.~~

21 5. ~~INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY~~  
22 ~~PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my~~  
23 ~~agent has the power and authority to do all of the following:~~

24 a. ~~Request, review, and receive any information, verbal or written, regarding my~~  
25 ~~physical or mental health, including medical and hospital records.~~

26 b. ~~Execute on my behalf any releases or other documents that may be required~~  
27 ~~in order to obtain this information.~~

28 e. ~~Consent to the disclosure of this information.~~

29 ~~(If you want to limit the authority of your agent to receive and disclose information~~  
30 ~~relating to your health, you must state the limitations in paragraph 4 above.)~~

1           6. ~~SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to~~  
2           implement the health care decisions that my agent is authorized by this document  
3           to make, my agent has the power and authority to execute on my behalf all of the  
4           following:

5           a. Documents titled or purporting to be a "Refusal to Permit Treatment" and  
6           "Leaving Hospital Against Medical Advice".

7           b. Any necessary waiver or release from liability required by a hospital or  
8           physician.

9           7. ~~DURATION. (Unless you specify a shorter period in the space below, this power~~  
10          ~~of attorney will exist until it is revoked.)~~

11          This durable power of attorney for health care expires on

12          \_\_\_\_\_  
13          \_\_\_\_\_  
14          (Fill in this space ONLY if you want the authority of your agent to end on a specific  
15          date.)

16          8. ~~DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate~~  
17          ~~any alternate agents but you may do so. Any alternate agent you designate will be~~  
18          ~~able to make the same health care decisions as the agent you designated in~~  
19          ~~paragraph 1, above, in the event that agent is unable or ineligible to act as your~~  
20          ~~agent. If the agent you designated is your spouse, he or she becomes ineligible to~~  
21          ~~act as your agent if your marriage is dissolved. Your agent may withdraw whether~~  
22          ~~or not you are capable of designating another agent.)~~

23                 If the person designated as my agent in paragraph 1 is not available or  
24                 becomes ineligible to act as my agent to make a health care decision for me or  
25                 loses the mental capacity to make health care decisions for me, or if I revoke that  
26                 person's appointment or authority to act as my agent to make health care  
27                 decisions for me, then I designate and appoint the following persons to serve as  
28                 my agent to make health care decisions for me as authorized in this document,  
29                 such persons to serve in the order listed below:

30           a. First

31           Alternate Agent: \_\_\_\_\_



1           When I am unable to make and communicate health care decisions for myself, I trust  
2 and appoint \_\_\_\_\_ to make health care decisions for me. This  
3 person is called my health care agent.

4           Relationship of my health care agent to me: \_\_\_\_\_

5           Telephone number of my health care agent: \_\_\_\_\_

6           Address of my health care agent: \_\_\_\_\_

7           (OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my  
8 health care agent is not reasonably available, I trust and appoint \_\_\_\_\_  
9 to be my health care agent instead.

10          Relationship of my alternate health care agent to me: \_\_\_\_\_

11          Telephone number of my alternate health care agent: \_\_\_\_\_

12          Address of my alternate health care agent: \_\_\_\_\_

13                   THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO

14                                   DO

15                   IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE

16                                   DECISIONS FOR MYSELF

17                                   (I know I can change these choices)

18          My health care agent is automatically given the powers listed below in (A) through (D).

19 My health care agent must follow my health care instructions in this document or any other  
20 instructions I have given to my agent. If I have not given health care instructions, then my  
21 agent must act in my best interest.

22          Whenever I am unable to make and communicate health care decisions for myself, my  
23 health care agent has the power to:

24          (A) Make any health care decision for me. This includes the power to give, refuse, or  
25 withdraw consent to any care, treatment, service, or procedures. This includes deciding  
26 whether to stop or not start health care that is keeping me or might keep me alive and deciding  
27 about mental health treatment.

28          (B) Choose my health care providers.

29          (C) Choose where I live and receive care and support when whose choices relate to  
30 my health care needs.



1 \_\_\_\_\_

2 \_\_\_\_\_

3 My fears about my health care:

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 My spiritual or religious beliefs and traditions:

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 My beliefs about when life would be no longer worth living:

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 My thoughts about how my medical condition might affect my family:

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 (B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH

20 CARE

21 (I know I can change these choices or leave any of them blank)

22 Many medical treatments may be used to try to improve my medical condition or to prolong my

23 life. Examples include artificial breathing by a machine connected to a tube in the lungs,

24 artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis,

25 antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then

26 stopped if they do not help.

27 I have these views about my health care in these situations:

28 (Note: You can discuss general feelings, specific treatments, or leave any of them

29 blank).

30 If I had a reasonable chance of recovery and were temporarily unable to make and

31 communicate health care decisions for myself, I would want:

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 If I were dying and unable to make and communicate health care decisions for myself, I  
5 would want:

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 If I were permanently unconscious and unable to make and communicate health care  
10 decisions for myself, I would want:

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 If I were completely dependent on others for my care and unable to make and  
15 communicate health care decisions for myself, I would want:

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 In all circumstances, my doctors will try to keep me comfortable and reduce my pain.  
20 This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 There are other things that I want or do not want for my health care, if possible:  
25 Who I would like to be my doctor:

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_

29 Where I would like to live to receive health care:

30 \_\_\_\_\_

31 \_\_\_\_\_

1 \_\_\_\_\_

2 Where I would like to die and other wishes I have about dying:

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 My wishes about what happens to my body when I die (cremation, burial):

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 Any other things:

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 PART III: MAKING AN ANATOMICAL GIFT

15 I would like to be an organ donor at the time of my death. I have told my family my  
16 decision and ask my family to honor my wishes. I wish to donate the following (initial one  
17 statement):

18  Any needed organs and tissue.

19  Only the following organs and tissue: \_\_\_\_\_

20 PART IV: MAKING THE DOCUMENT LEGAL

21 9. ~~PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney~~  
22 ~~for health care directive.~~

23 DATE AND SIGNATURE OF PRINCIPAL

24 (YOU MUST DATE AND SIGN THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE)

25 I sign my name to this ~~Statutory Health Care Directive Form Durable Power of~~  
26 ~~Attorney For Health Care~~ on \_\_\_\_\_ at \_\_\_\_\_

27 (date) (city)

28 \_\_\_\_\_

29 (state)

30 \_\_\_\_\_

31 (you sign here)

1 (THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT  
2 IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN  
3 YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY  
4 ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE  
5 ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS ~~POWER OF~~  
6 ATTORNEY HEALTH CARE DIRECTIVE.)

7 NOTARY PUBLIC OR STATEMENT OF WITNESSES

8 This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The  
9 person notarizing this document may be an employee of a health care or long-term care  
10 provider providing your care. At least one witness to the execution of the document must not  
11 be a health care or long-term care provider providing you with direct care or an employee of the  
12 health care or long-term care provider providing you with direct care. None of the following  
13 may be used as a notary or witness:

- 14 1. A person you designate as your agent or alternate agent;
- 15 2. Your spouse;
- 16 3. A person related to you by blood, marriage, or adoption;
- 17 4. A person entitled to inherit any part of your estate upon your death; or
- 18 5. A person who has, at the time of executing this document, any claim against your  
19 estate.

20 Option 1: Notary Public

21 In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged  
22 the declarant's signature on this document or acknowledged that the declarant directed the  
23 person signing this document to sign on the declarant's behalf.

24 \_\_\_\_\_

25 (Signature of Notary Public)

26 My commission expires \_\_\_\_\_, 20\_\_.

27 Option 2: Two Witnesses

28 Witness One:

29 (1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of  
30 declarant) acknowledged the declarant's signature on this document or

1 acknowledged that the declarant directed the person signing this document to  
2 sign on the declarant's behalf.

3 (2) I am at least eighteen years of age.

4 (3) If I am a health care provider or an employee of a health care provider giving  
5 direct care to the declarant, I must initial this box: [ ].

6 I certify that the information in (1) through (3) is true and correct.

7 \_\_\_\_\_

8 (Signature of Witness One)

9 \_\_\_\_\_

10 (Address)

11 Witness Two:

12 (1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of  
13 declarant) acknowledged the declarant's signature on this document or  
14 acknowledged that the declarant directed the person signing this document to  
15 sign on the declarant's behalf.

16 (2) I am at least eighteen years of age.

17 (3) If I am a health care provider or an employee of a health care provider giving  
18 direct care to the declarant, I must initial this box: [ ].

19 I certify that the information in (1) through (3) is true and correct.

20 \_\_\_\_\_

21 (Signature of Witness Two)

22 \_\_\_\_\_

23 (Address)

24 40: ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this  
25 appointment and agree to serve as agent for health care decisions. I understand I  
26 have a duty to act consistently with the desires of the principal as expressed in this  
27 appointment. I understand that this document gives me authority over health care  
28 decisions for the principal only if the principal becomes ~~incapable~~ incapacitated. I  
29 understand that I must act in good faith in exercising my authority under this power  
30 of attorney. I understand that the principal may revoke this power of attorney at  
31 any time in any manner.

1                   If I choose to withdraw during the time the principal is competent, I must notify  
2                   the principal of my decision. If I choose to withdraw when the principal is  
3                   ~~incapable of making the principal's~~ not able to make health care decisions, I must  
4                   notify the principal's physician.

5                   \_\_\_\_\_

6                   (Signature of agent/date)

7                   \_\_\_\_\_

8                   (Signature of alternate agent/date)

9                   PRINCIPAL'S STATEMENT

10 I have read a written explanation of the nature and effect of an appointment of a health care  
11 agent that is attached to my health care directive.

12 Dated this     day of     , 20     .  
13 \_\_\_\_\_

14 (Signature of Principal)

15 STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM  
16 CARE FACILITY (Only necessary if person is a resident of long-term care facility and Part I is  
17 completed appointing an agent. This statement does not need to be completed if the resident  
18 has read a written explanation of the nature and effect of an appointment of a health care agent  
19 and completed the Principal's Statement above.)

20 I have explained the nature and effect of this health care directive to \_\_\_\_\_  
21 (name of principal) who signed this document and who is a resident of \_\_\_\_\_  
22 (name and city of facility). I am (check one of the following):

23  A recognized member of the clergy.

24  An attorney licensed to practice in North Dakota.

25  A person designated by the district court for the county in which the above-named facility  
26 is located.

27  A person designated by the North Dakota department of human services.

28 Dated on \_\_\_\_\_, 20     . \_\_\_\_\_ (Signature)

29 STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR  
30 PERSON BEING ADMITTED TO HOSPITAL (Only necessary if person is a patient in a hospital  
31 or is being admitted to a hospital and Part I is completed appointing an agent. This statement

1 does not need to be completed if the patient or person being admitted has read a written  
2 explanation of the nature and effect of an appointment of a health care agent and completed  
3 the Principal's Statement above.)  
4 I have explained the nature and effect of this health care directive to  
5 \_\_\_\_\_ (name of principal) who signed this document and who  
6 is a patient or is being admitted as a patient of \_\_\_\_\_  
7 (name and city of hospital). I am (check one of the following):  
8  An attorney licensed to practice in North Dakota.  
9  A person designated by the hospital to explain the health care directive.  
10 Dated on \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
11 (Signature)

12 **SECTION 18. AMENDMENT.** Section 23-06.5-18 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **23-06.5-18. Penalties.**

- 15 1. A person who, without authorization of the principal, willfully alters or forges a  
16 ~~power of attorney~~ health care directive or willfully conceals or destroys a  
17 revocation with the intent and effect of causing a withholding or withdrawal of  
18 life-sustaining procedures which hastens the death of the principal is guilty of a  
19 class C felony.
- 20 2. A person who, without authorization of the principal, willfully alters, forges,  
21 conceals, or destroys a ~~power of attorney~~ health care directive or willfully alters or  
22 forges a revocation of a ~~power of attorney~~ health care directive is guilty of a class  
23 A misdemeanor.
- 24 3. The penalties provided in this section do not preclude application of any other  
25 penalties provided by law.

26 **SECTION 19. REPEAL.** Chapter 23-06.4 of the North Dakota Century Code is  
27 repealed.