

SENATE BILL NO. 2297

Introduced by

Senators Roers, Barta, Lee, Sorvaag

Representative O'Brien

1 A BILL for an Act to amend and reenact subsection 1 of section 23-12-13 of the North Dakota
2 Century Code, relating to informed consent of incapacitated individuals.

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

4 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 1. Informed consent for health care for a minor patient or a patient who is determined by
7 ~~a physician~~ an expert examiner, as defined in section 30.1-01-06 to be an
8 incapacitated person, as defined in ~~subsection 2 of section 30.1-26-01, and unable to~~
9 ~~consent~~ may be obtained from a person authorized to consent on behalf of the patient.
10 Persons in the following classes and in the following order of priority may provide
11 informed consent to health care on behalf of the patient:

12 a. The individual, if any, to whom the patient has given a durable power of attorney
13 that encompasses the authority to make health care decisions or has been
14 identified as an agent in a health care directive with the authority to make health
15 care decisions, unless a court of competent jurisdiction specifically authorizes a
16 guardian to make medical decisions for the incapacitated ~~person~~ individual with
17 priority over any existing, valid durable power of attorney or health care directive;

18 b. The appointed guardian or custodian of the patient, if any;

19 c. The patient's spouse who has maintained significant contacts with the
20 incapacitated ~~person~~ individual;

21 ~~Children~~ A child of the patient who ~~are~~ is at least eighteen years of age and who
22 ~~have~~ has maintained significant contacts with the incapacitated ~~person~~ individual;

23 e. ~~Parents~~ A parent of the patient, including a stepparent who has maintained
24 significant contacts with the incapacitated ~~person~~ individual;

- 1 f. ~~Adult brothers and sisters~~An adult brother or sister of the patient who ~~have~~has
2 maintained significant contacts with the incapacitated ~~person~~individual;
- 3 g. ~~Grandparents~~A grandparent of the patient who ~~have~~has maintained significant
4 contacts with the incapacitated ~~person~~individual;
- 5 h. ~~Grandchildren~~A grandchild of the patient who ~~are~~is at least eighteen years of age
6 and who ~~have~~has maintained significant contacts with the incapacitated ~~person~~;
7 or individual;
- 8 i. A close relative or friend of the patient who is at least eighteen years of age and
9 who has maintained significant contacts with the incapacitated ~~person~~individual;
10 or
- 11 j. An interdisciplinary team consisting of at least two health care professionals.
- 12 (1) The interdisciplinary team may include an employee or agent of a health
13 care provider treating the incapacitated individual, including a member of
14 the ethics committee, provided that no member of the team may be directly
15 involved with the treatment of the incapacitated individual.
- 16 (2) If consent is provided under subdivision j, a health care provider shall
17 continue good faith efforts to identify and locate an individual in a preceding
18 level of priority.