

VIRGINIA ACTS OF ASSEMBLY -- 2010 RECONVENED SESSION

CHAPTER 792

An Act to amend and reenact §§ 2.2-713, 54.1-2982, 54.1-2983.2, 54.1-2983.3, 54.1-2984, 54.1-2986, 54.1-2986.2, 54.1-2987.1, and 54.1-2988 of the Code of Virginia, relating to advance medical directives.

[S 275]

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-713, 54.1-2982, 54.1-2983.2, 54.1-2983.3, 54.1-2984, 54.1-2986, 54.1-2986.2, 54.1-2987.1, and 54.1-2988 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-713. Minimum requirements for local programs; authority.

Every local or regional program with which the Department contracts to provide services as a public guardian or conservator shall (i) furnish bond with corporate surety in an amount deemed sufficient by the Department to afford adequate financial protection to the maximum number of incapacitated persons to be served by the program; (ii) have in place a multi-disciplinary panel to (a) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person and (b) continually review cases being handled by the program as required by the Department; (iii) accept only appointments as guardian or conservator that generate no fee or would generate a minimal fee as defined by regulation payable from a public source of funds and not from the estate of the incapacitated person; (iv) have a direct service staff to client ratio that is consistent with that specified by regulation of the Department; and (v) develop a plan, in consultation with the local circuit court and sheriffs where appropriate, to provide advance notice to the court when the program falls below or exceeds the ideal range of staff to client ratios in order to assure continuity of services. Volunteers shall not be counted for purposes of ascertaining compliance with the staff to client ratio specified by the Department.

A local or regional program that exceeds the specified staff to client ratio shall not be disqualified from serving as a guardian or conservator except as provided by regulation or if the court or the Department finds that there is an immediate threat to the person or property of any incapacitated person or that exceeding the specified ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve.

A local or regional program appointed as a guardian or conservator shall have all the powers and duties specified in Article 2 (§ 37.2-1019 et seq.) of Chapter 10 of Title 37.2, except as otherwise specifically limited by the court. In addition, a public guardian or conservator shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian or conservator for the incapacitated person. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements if the public guardian or conservator is not aware of any person that has been otherwise designated to make arrangements for disposition of remains as set forth in § 54.1-2825 of the Code of Virginia. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements after the death of an incapacitated person if the next of kin of the incapacitated does not wish to make the arrangements and the public guardian or conservator has made a good faith effort to locate the next of kin to determine if the next of kin wishes to make the burial, cremation or funeral arrangements. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian or conservator. The funeral service licensee, funeral service establishment, registered crematory, public guardian or conservator shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation or other disposition when the provisions of this section are met, unless such acts, decisions or omissions resulted from bad faith or malicious intent.

A public guardian shall not have authority to ~~admit an incapacitated person to a psychiatric hospital or mental health facility without a civil commitment proceeding, or to approve or authorize a sterilization procedure~~ except when specific authority has been given pursuant to a proceeding in the circuit court. A public guardian may authorize *admission of an incapacitated person to a mental health facility as provided in subsection B of § 37.2-805.1* and may authorize mental health treatment, including the administration of psychotropic medication, unless the appointing court specifically provides otherwise.

A local or regional program appointed as a guardian or conservator may delegate the powers, duties and responsibilities to individual volunteers or professional staff as authorized in the contract with the Department.

In addition to funds received from the Department, a local or regional program may accept private funds solely for the purposes of providing public education, supplemental services for incapacitated

persons and support services for private guardians and conservators, consistent with the purposes of this article.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder ~~which that~~ precludes communication or impairs judgment and ~~which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient,~~ to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. ~~The second physician or licensed clinical psychologist shall not be otherwise currently involved in the treatment of the patient, unless such an independent physician or licensed clinical psychologist is not reasonably available.~~ For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a

subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 54.1-2983.2. Capacity; required determinations.

A. Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision in accordance with this article. A determination that a patient is incapable of making an informed decision may apply to a particular health care decision, to a specified set of health care decisions, or to all health care decisions. No person shall be deemed incapable of making an informed decision based solely on a particular clinical diagnosis.

B. Prior to providing, continuing, withholding, or withdrawing health care pursuant to an authorization that has been obtained or will be sought pursuant to this article and prior to, or as soon as reasonably practicable after initiating health care for which authorization has been obtained or will be sought pursuant to this article, and no less frequently than every 180 days while the need for health care continues, the attending physician shall, ~~in addition to his own written certification, obtain written certification~~ *certify in writing upon personal examination of the patient that the patient is incapable of making an informed decision regarding health care from a physician or licensed clinical psychologist that shall be based on a personal examination of the patient and shall obtain written certification from a capacity reviewer that, based upon a personal examination of the patient, the patient is incapable of making an informed decision. However, certification by a capacity reviewer shall not be required if the patient is unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition. The second physician or licensed clinical psychologist capacity reviewer providing written certification that a patient is incapable of making an informed decision, if required, shall not be otherwise currently involved in the treatment of the person assessed, unless such an independent physician or clinical psychologist capacity reviewer is not reasonably available. The cost of the assessment shall be considered for all purposes a cost of the patient's health care.*

C. If, at any time, a patient is determined to be incapable of making an informed decision, the patient shall be notified, as soon as practical and to the extent he is capable of receiving such notice, that such determination has been made before providing, continuing, withholding, or withdrawing health care as authorized by this article. Such notice shall also be provided, as soon as practical, to the patient's agent or person authorized by § 54.1-2986 to make health care decisions on his behalf.

D. A single physician may, at any time, upon personal evaluation, determine that a patient who has previously been determined to be incapable of making an informed decision is now capable of making an informed decision, provided such determination is set forth in writing.

§ 54.1-2983.3. Exclusions and limitations of advance directives.

A. The absence of an advance directive by an adult patient shall not give rise to any presumption as to his intent to consent to or refuse any particular health care.

B. The provisions of this article shall not apply to authorization of nontherapeutic sterilization, abortion, or psychosurgery.

C. ~~The provisions authorizing~~ *If any provision of a patient's advance directive conflicts with the authority conferred by any emergency custody, temporary detention, involuntary admission, and mandatory outpatient treatment order set forth in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 shall apply to all adults, notwithstanding any contrary instruction in any advance directive or by any other provision of law, the provisions of the patient's advance directive that create the conflict shall have no effect. However, a patient's advance directive shall otherwise be given full effect to the extent that it does not conflict with such provisions, or any other provision of law.*

D. The provisions of this article, if otherwise applicable, may be used to authorize admission of a patient to a facility, as defined in § 37.2-100, only if the admission is otherwise authorized under Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

§ 54.1-2984. Suggested form of written advance directives.

An advance directive executed pursuant to this article may, but need not, be in the following form:

ADVANCE MEDICAL DIRECTIVE

I,, ~~willfully~~ *willingly* and voluntarily make known my wishes in the event that I am incapable of making an informed decision, as follows:

I understand that my advance directive may include the selection of an agent as well as set forth my choices regarding health care. The term "health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, *nursing home*, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed health care decision or unable to make a rational evaluation of the risks and benefits of a proposed health care decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a ~~second physician or licensed clinical psychologist~~ *capacity reviewer, if certification by a capacity reviewer is required by law*, after a personal examination of me and shall be certified in writing. ~~The second physician or licensed clinical psychologist shall not be otherwise currently involved in my treatment, unless such independent physician or licensed clinical psychologist is not reasonably available.~~ Such certification shall be required before health care is provided, continued, withheld or withdrawn, before any named agent shall be granted authority to make health care decisions on my behalf, and before, or as soon as reasonably practicable after, health care is provided, continued, withheld or withdrawn and every 180 days thereafter while the need for health care continues.

If, at any time, I am determined to be incapable of making an informed decision, I shall be notified, to the extent I am capable of receiving such notice, that such determination has been made before health care is provided, continued, withheld, or withdrawn. Such notice shall also be provided, as soon as practical, to my named agent or person authorized by § 54.1-2986 to make health care decisions on my behalf. If I am later determined to be capable of making an informed decision by a physician, in writing, upon personal examination, any further health care decisions will require my informed consent.

(SELECT ANY OR ALL OF THE OPTIONS BELOW.)

OPTION I: APPOINTMENT OF AGENT (CROSS THROUGH OPTIONS I AND II BELOW IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

I hereby appoint (primary agent), of (address and telephone number), as my agent to make health care decisions on my behalf as authorized in this document. If (primary agent) is not reasonably available or is unable or unwilling to act as my agent, then I appoint (successor agent), of (address and telephone number), to serve in that capacity.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not make any decision regarding my health care which he knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what health care choice I would have made on my own behalf, then my agent shall make a choice for me based upon what he believes to be in my best interests.

OPTION II: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT WANT AND ADD ANY LANGUAGE YOU DO WANT.)

The powers of my agent shall include the following:

A. To consent to or refuse or withdraw consent to any type of health care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or of inadvertently hastening my death;

B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;

C. To employ and discharge my health care providers;

D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, assisted living facility or other medical care facility. If I have

authorized admission to a health care facility for treatment of mental illness, that authority is stated elsewhere in this advance directive;

E. To authorize my admission to a health care facility for the treatment of mental illness for no more than 10 calendar days provided I do not protest the admission and a physician on the staff of or designated by the proposed admitting facility examines me and states in writing that I have a mental illness and I am incapable of making an informed decision about my admission, and that I need treatment in the facility; and to authorize my discharge (including transfer to another facility) from the facility;

F. To authorize my admission to a health care facility for the treatment of mental illness for no more than 10 calendar days, even over my protest, if a physician on the staff of or designated by the proposed admitting facility examines me and states in writing that I have a mental illness and I am incapable of making an informed decision about my admission, and that I need treatment in the facility; and to authorize my discharge (including transfer to another facility) from the facility. [My physician or licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I understand the consequences of this provision of my advance directive: _____];

G. To authorize the specific types of health care identified in this advance directive [specify cross-reference to other sections of directive] even over my protest. [My physician or licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I understand the consequences of this provision of my advance directive: _____];

H. To continue to serve as my agent even in the event that I protest the agent's authority after I have been determined to be incapable of making an informed decision;

I. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law that offers the prospect of direct therapeutic benefit to me;

J. To authorize my participation in any health care study approved by an institutional review board or research review committee pursuant to applicable federal or state law that aims to increase scientific understanding of any condition that I may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to me;

K. To make decisions regarding visitation during any time that I am admitted to any health care facility, consistent with the following directions:; and

L. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

Further, my agent shall not be liable for the costs of health care pursuant to his authorization, based solely on that authorization.

OPTION III: HEALTH CARE INSTRUCTIONS

(CROSS THROUGH PARAGRAPHS A AND/OR B IF YOU DO NOT WANT TO GIVE ADDITIONAL SPECIFIC INSTRUCTIONS ABOUT YOUR HEALTH CARE.)

A. I specifically direct that I receive the following health care if it is medically appropriate under the circumstances as determined by my attending physician:

B. I specifically direct that the following health care not be provided to me under the following circumstances (you may specify that certain health care not be provided under any circumstances):
.....

OPTION IV: END OF LIFE INSTRUCTIONS

(CROSS THROUGH THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures - including artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially administered hydration - would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

OPTION: OTHER DIRECTIONS ABOUT LIFE-PROLONGING PROCEDURES. (If you wish to provide your own directions, or if you wish to add to the directions you have given above, you may do so here. If you wish to give specific instructions regarding certain life-prolonging procedures, such as artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially administered hydration, this is where you should write them.) I direct that:

OPTION: My other instructions regarding my care if I have a terminal condition are as follows:

-----;
 -----;
 In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final expression of my legal right to refuse health care and acceptance of the consequences of such refusal.

OPTION V: APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN, TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION FOR YOU.)

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint as my agent, of (address and telephone number), to make any such anatomical gift or organ, tissue or eye donation following my death. I further direct that: (declarant's directions concerning anatomical gift or organ, tissue or eye donation).

This advance directive shall not terminate in the event of my disability.

AFFIRMATION AND RIGHT TO REVOKE: By signing below, I indicate that I am emotionally and mentally capable of making this advance directive and that I understand the purpose and effect of this document. I understand I may revoke all or any part of this document at any time (i) with a signed, dated writing; (ii) by physical cancellation or destruction of this advance directive by myself or by directing someone else to destroy it in my presence; or (iii) by my oral expression of intent to revoke.

 (Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

(Witness) _____

(Witness) _____

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions.

A. Whenever a patient is determined to be incapable of making an informed decision and (i) has not made an advance directive in accordance with this article or (ii) has made an advance directive in accordance with this article that does not indicate his wishes with respect to the health care at issue and does not appoint an agent, the attending physician may, upon compliance with the provisions of this section, provide, continue, withhold or withdraw health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and capable person in a higher class:

1. A guardian for the patient. This subdivision shall not be construed to require such appointment in order that a health care decision can be made under this section; or

2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or

3. An adult child of the patient; or

4. A parent of the patient; or

5. An adult brother or sister of the patient; or

6. Any other relative of the patient in the descending order of blood relationship; or

7. *Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.*

If two or more of the persons listed in the same class in subdivisions A 3 through A 6 7 with equal decision-making priority inform the attending physician that they disagree as to a particular health care decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

B. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an organ donor in any written document, no person noted in this section shall revoke, or in any way hinder, such organ donation.

§ 54.1-2986.2. Health care decisions in the event of patient protest.

A. Except as provided in ~~subsections~~ *subsection B and or C*, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is protested by the patient.

B. ~~If A patient's agent may make a health care decision over the protest of a patient who is incapable of making an informed decision protests a health care recommendation that is otherwise authorized by his advance directive, his agent may make a decision consistent with the advance directive over the patient's protest if:~~

1. ~~The patient's advance directive explicitly authorizes the patient's agent to make the health care decision at issue, even over the patient's later protest, and the patient's attending physician or licensed clinical psychologist attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision;~~

2. ~~The decision does not involve withholding or withdrawing life-prolonging procedures; and~~
~~2. The patient's advance directive explicitly states that the provisions of his advance directive regarding the specific decision at issue should govern, even over his later protest;~~

3. ~~The patient's advance directive was signed by the patient's attending physician or licensed clinical psychologist who attested that the patient was capable of making an informed decision and understood the consequences of the provision; and~~

4 3. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.

C. ~~If a patient who is incapable of making an informed decision protests a health care recommendation, his~~ *In cases in which a patient has not explicitly authorized his agent to make the health care decision at issue over the patient's later protest, a patient's agent, or person authorized to make decisions by pursuant to § 54.1-2986, may make a decision over the patient's protest of a patient who is incapable of making an informed decision if:*

1. The decision does not involve withholding or withdrawing life-prolonging procedures;

2. *The decision does not involve (i) admission to a facility as defined in § 37.2-100 or (ii) treatment or care that is subject to regulations adopted pursuant to § 37.2-400;*

3. The health care decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed by the patient *in an advance directive or otherwise* regarding such health care or, if they are unknown, is in the patient's best interests;

4. *The health care that is to be provided, continued, withheld, or withdrawn has been determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law; and*

3 5. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's ~~ethics~~ *patient care consulting* committee, if one exists, or otherwise by two physicians not currently involved in the patient's care; or in the determination of the patient's capacity to make health care decisions.

D. A patient's protest shall not revoke the patient's advance directive unless it meets the requirements of § 54.1-2985.

E. If a patient protests the authority of a named agent or any person authorized to make health care decisions by § 54.1-2986, except for the patient's guardian, the protested individual shall have no authority under this article to make health care decisions on his behalf unless the patient's advance directive explicitly confers continuing authority on his agent, even over his later protest. If the protested individual is denied authority under this subsection, authority to make health care decisions shall be determined by any other provisions of the patient's advance directive, or in accordance with § 54.1-2986 *or in accordance with any other provision of law.*

§ 54.1-2987.1. Durable Do Not Resuscitate Orders.

A. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.

B. If a patient is able to, and does, express to a health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest, such expression shall revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order. In no case shall any person other than the patient have authority to revoke a Durable Do Not Resuscitate Order executed upon the request of and with the consent of the patient himself.

If the patient is a minor or is otherwise incapable of making an informed decision and the Durable Do Not Resuscitate Order was issued upon the request of and with the consent of the person authorized to consent on the patient's behalf, then the expression by said authorized person to a health care provider or practitioner of the desire that the patient be resuscitated shall so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

When a Durable Do Not Resuscitate Order has been revoked as provided in this section, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

C. Durable Do Not Resuscitate Orders issued in accordance with this section shall remain valid and in effect until revoked as provided in subsection B or until rescinded, in accordance with accepted medical practice, by the provider who issued the Durable Do Not Resuscitate Order. In accordance with this section and regulations promulgated by the Board of Health, (i) qualified emergency medical services personnel as defined in § 32.1-111.1 ~~and~~; (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the Board of Health, the Department of Social Services, or the Department of Behavioral Health and Developmental Services or operated, licensed or owned by another state agency; *and (iii) licensed health care practitioners at any continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2* are authorized to follow Durable Do Not Resuscitate Orders that are available to them in a form approved by the Board of Health.

D. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw health care if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing health care pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. For the purposes of this section:

"Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

F. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practice.

G. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this article.

§ 54.1-2988. Immunity from liability; burden of proof; presumption.

A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of issuing a Durable Do Not Resuscitate Order or the providing, continuing, withholding or the withdrawal of health care under authorization or consent obtained in accordance with this article or as the result of the provision, withholding or withdrawal of ongoing health care in accordance with § 54.1-2990. No person or facility providing, continuing, withholding or withdrawing health care or physician issuing a Durable Do Not Resuscitate Order under authorization or consent obtained pursuant to this article or otherwise in accordance with § 54.1-2990 shall incur liability arising out of a claim to the extent the claim is based on lack of authorization or consent for such action.

Any agent or person identified in § 54.1-2986 who authorizes or consents to the providing, continuing, withholding or withdrawal of health care in accordance with this article shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of health care.

No individual serving on a facility's patient care consulting committee as defined in this article and no physician rendering a determination or affirmation in cases in which no patient care consulting committee exists shall be subject to criminal prosecution or civil liability for any act or omission done or made in good faith in the performance of such functions.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the providing, continuing, withholding or withdrawal of health care, or issuing, consenting to, making or following a Durable Do Not Resuscitate Order in accordance with § 54.1-2987.1 did not, in good faith, comply with the provisions of this article.

The distribution to patients of written advance directives in a form meeting the requirements of § 54.1-2984 and assistance to patients in the completion and execution of such forms by health care providers shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) ~~of this title.~~

An advance directive or Durable Do Not Resuscitate Order made, consented to or issued in accordance with this article shall be presumed to have been made, consented to, or issued voluntarily and in good faith by an adult who is capable of making an informed decision, physician or person authorized to consent on the patient's behalf.