
Statutes and Proposals to Empower Appointment of Proxies

E

Provisions of Existing Durable Power of Attorney Statutes	390
Uniform Durable Power of Attorney Act (Model Bill)	391
Durable Power of Attorney Statutes, by State (alphabetically)	393
Other Proposed Uniform Statutes	423
Uniform Law Commissioner's Model Health-Care Consent Act	423
Uniform Right to Refuse Treatment Act	428
Medical Treatment Decision Act, Michigan House Bill No. 4492 (1981)	431

Table E1.
Provisions of Existing Durable Power of Attorney Statutes

	Virginia Model ⁽²⁾	California Kansas Massachusetts	Arkansas Oklahoma Wyoming	Tennessee	Florida	North Carolina	Georgia Louisiana Oregon
Is court approval required for decisions regarding the person?	No	Yes	Yes	No	No ⁽³⁾	No	No
Is registration or filing required ⁽¹⁾	No	No	Yes	No	No	Yes	No
Is there a procedure for delegation of power?	No	No	Yes	No	No	Yes	No
Must durable power of attorney be specified?	Yes	Yes	Yes	Yes	Yes	Yes	No ⁽⁴⁾
Can durable power of attorney be used to nominate conservator or guardian?	No Law	Creates Strong Presumption	No	No	No	No	No
Must accounting be given to court at specified times?	No Law	No Law	Yes	No	No	No	No
Are there restrictions as to who can serve as attorney?	No	No	No	No	Limited to certain family members	No	No

(1) South Carolina requires recording durable power of attorney in the same manner as a deed. In South Dakota it may be recorded.

(2) The following states have adopted durable power of attorney statutes patterned after Virginia's: Alaska, Arizona, Colorado, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Michigan, Minnesota, Nebraska, New Mexico, New York, North Dakota, Maryland, Pennsylvania, South Carolina, Texas, Utah, Vermont, Washington, West Virginia, Virginia.

(3) If principal is *adjudicated* incompetent, power of attorney lapses.

(4) Power of attorney is durable unless otherwise specified.

Uniform Durable Power of Attorney Act*

§ 1. [Definition]

A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

§ 2. [Durable Power of Attorney Not Affected By Disability or Incapacity]

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled.

§ 3. [Relation of Attorney in Fact to Court-appointed Fiduciary]

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§ 4. [Power of Attorney Not Revoked Until Notice]

(a) The death of a principal who has executed a power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

* Unif. Durable Power of Attorney Act § 1-10, 8 U.L.A. 74 (1982).

(b) The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

§ 5. [Proof of Continuance of Durable and Other Powers of Attorney by Affidavit]

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§ 6. [Uniformity of Application and Construction]

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 7. [Short Title]

This Act may be cited as the Uniform Durable Power of Attorney Act.

§ 8. [Severability]

If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 9. [Time of Taking Effect]

This Act takes effect _____.

§ 10. [Repeal]

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

Durable Power of Attorney Statutes, by State*

Alaska

§ 13.26.325. [Adopted the statute reprinted under Arizona, except that verb form in first sentence is altered.]

Alaska Stat. § 13.26.325 (1973) (effective Jan. 1, 1973).

Arizona

§ 14-5501. When power of attorney not affected by disability.

Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "this power of attorney shall not be affected by disability of the principal," or "this power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

Ariz. Rev. Stat. Ann. § 14-5501 (1975) (effective Jan. 1, 1974).

Arkansas

§ 58-501. Execution—Purpose—Approval.

* Statutes have been edited only where necessary to correct spelling and to standardize printing format.

(a) If a resident of this State desires to execute a power of attorney in anticipation or because of infirmity resulting from injury, old age, senility, blindness, disease, or other related or similar cause as a means of providing for the care of his or her person or property, or both, he or she shall execute the instrument in one [1] of the following three [3] methods:

(1) in the presence of and with the approval of the Judge of the Probate Court of the county of the principal's domicile, or

(2) in the presence of at least two [2] witnesses who shall attest and prove the execution by affidavit to be filed with said instrument, to be approved by the Probate Court of the county of the principal's domicile, or

(3) in the presence of a notary public who shall acknowledge the same, which instrument with the certificate of said notary public shall be filed with and approved by the Probate Court of the county of the principal's domicile.

The power is not invalidated by reason of any subsequent change in the mental or physical condition of the principal, including but not restricted to incompetency.

(b) The approval of the judge may be given only if:

(1) the principal requests approval;

(2) the attorney in fact consents to serve;

(3) the judge is satisfied, after any examination and investigation he deems appropriate, that the principal is a person covered by this Act and reasonably understands the nature and purpose of the power, and that the attorney in fact is a suitable person to carry out the obligations imposed upon him; and

(4) the provisions of this Act have been observed. Approval may be given informally in chambers or other convenient place without the necessity of service of summons or other notice and shall be endorsed upon the face of the original of the instrument.

The power remains valid until terminated as provided in this Act.

§ 58-502. Scope and applicability of the power.

(a) The power of attorney shall show or state:

(1) the fact of execution under the provisions of this Act;

(2) the time and conditions under which the power is to become effective;

(3) the extent and scope of the power conferred;

(4) who is to exercise the power; and

(5) the annual income covered by the instrument and the nature or description and estimated value of the property, if any, to be affected; and may state the conditions and circumstances under which the power terminates.

(b) The power may be restricted or it may grant complete authority to provide for the care of the principal's person and property. Except to the extent limited by the instrument creating the power or to the extent that court approval is required by the instrument, the attorney in fact without prior court approval may endorse checks and other instruments made payable to the principal; may sell, encumber, lease, or otherwise manage the principal's property; and may execute and deliver deeds, conveyances, stock and bond transfers, contracts and other instruments necessary to carry out the power.

§ 58-503. Attorney in fact—filing of power.

(a) The attorney in fact may be an individual, a corporation authorized by law to act in a fiduciary capacity, an agency of government, a Community Fund or United Fund participating agency, or the American National Red Cross.

(b) The original power of attorney shall be filed in the office of the clerk of the Probate Court of the county of the domicile of the principal and a certified copy thereof, together with the record of judicial approval, shall be recorded in the office of the recorder of each county in which real property to be affected by an exercise of the power is located.

§ 58-504. Limit of power.

A power of attorney executed under authority of this Act which grants powers concerning property [property] or income shall be approved only if limited to (1) property having a gross value not exceeding \$20,000, exclusive of homestead and, excluding the capitalized value of any annual income, or (2) an annual money income covered by the instrument not exceeding \$6,000. A performance bond shall not be filed unless required by a provision of the power.

§ 58-505. Removal of attorney in fact—appointment of successor.

If the attorney in fact or any successor dies, ceases to act, refuses or is unable to serve, resigns, fails to maintain or replace a bond, or is removed for cause by a court, a successor attorney in fact may be appointed by the principal. If the principal, without having revoked the power of attorney, fails or is unable to appoint a successor within a reasonable time, a judge of the court which approved the power may appoint a successor, unless precluded from doing so by provisions of the original power of attorney. The appointment of a successor attorney in fact shall be in writing. If the appointment is by the principal, it is subject to approval by a judge of the court which approved the original power. The original and certified copies of the appointment of the successor shall be filed and recorded as required for an original power of attorney.

§ 58-506. Termination of power—filing—protection of third persons—acts done after termination.

(a) A power of attorney terminates on:

- (1) written revocation by the principal;
- (2) death of the principal;
- (3) order of a court appointing a guardian, of the person or property or both of the principal, unless the order otherwise provides;
- (4) expiration or termination as specified in the power of attorney; or
- (5) a determination by a judge of the approving court that the value of the property or the amount of the annual money income covered by the instrument has so increased that this Act is no longer appropriately applicable.

(b) The original resignation of an attorney in fact, a written revocation of the power of attorney by a principal, or a certified copy of the death certificate of the principal or of the attorney in fact or of any court judgment or order terminating the power of attorney or removing the attorney in fact for cause, shall be filed promptly in the office of the clerk of the court whose judge approved the power, and certified copies shall be recorded promptly in all offices in which a certified copy of the original power of attorney is recorded. A notation of the terminating event shall be made by the clerk on the face of the original power of attorney.

(c) A person dealing with the attorney in fact is not required to inquire into the validity or adequacy of proceedings involving an approval or filing and recording of the power of attorney to determine if the principal or attorney in fact is qualified, or to determine whether the power may have been terminated if not yet shown by filing and recording under subsection (b). He is not required to inquire into the validity or propriety of any act of an attorney in fact apparently authorized by his approved power, or to assure the proper application by the attorney in fact of any money or property paid or delivered to him.

(d) The attorney in fact is liable to the principal and the principal's estate for all damage and loss the principal suffers because of the attorney's acts done after the attorney receives notice of the termination of his authority or after termination by provision of the power itself. After the power is terminated, other than by death of the principal, he may perform ministerial acts reasonably necessary to complete and conclude his duties.

§ 58-507. Liability of attorney in fact.

Unless otherwise provided in the power of attorney, an attorney in fact is bound by standards of conduct and liability applicable to other fiduciaries.

§ 58-508. Expenses—compensation for services.

An attorney in fact is entitled to reimbursement for his reasonable expenses incurred in the performance of his duties and, unless precluded by the power of attorney, to reasonable compensation for his services, payable out of the income and assets subject to the power. The amount of compensation and time of payment may be fixed in the power.

§ 58-509. Duty to account.

An attorney in fact shall account to the principal or his legal representative at times specified in the power of attorney, at any time directed by a judge of the approving court, and upon termination of the power or his authority; and he shall deliver promptly to the principal, his legal representative, or a successor attorney in fact all property held by him as attorney in fact upon termination of the power or his authority.

§ 58-510. Act limited to powers executed under it.

This Act governs only powers of attorney executed under it. It does not affect powers of attorney executed under other statutes or the common law of this State.

§ 58-511. Construction.

The provisions of this Act shall be liberally construed so as to effectuate its purposes.

Ark. Stat. Ann. §§ 58-501 to 511 (1971) (effective Feb. 12, 1965).

California

[Adopted the Uniform Durable Power of Attorney Act.]

Cal. Ann. Civ. Code §§ 2400 to 2407 (Deering 1983) (effective Sept. 16, 1981).

Colorado

§ 15-14-501. When power of attorney not affected by disability.

[Subsection (1) is identical to statute reprinted under Arizona.]

(2) An affidavit, executed by the attorney-in-fact or agent, stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the termination of the power of attorney by death is, in the absence of fraud, conclusive proof of the nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

Colo. Rev. Stat. § 15-14-501 (Cum. Supp. 1982).

Delaware

§ 4901. Defined.

A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing, and the writing contains the words: "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

§ 4902. Power not affected by disability.

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal, and his successors in interest, as if the principal were competent and not disabled.

§ 4903. Relation of attorney-in-fact to court-appointed fiduciary.

(a) The appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of his person shall terminate all powers of attorney created pursuant to this chapter to the extent the powers held by the attorney-in-fact prior to the appointment of a guardian or other fiduciary are granted to the guardian or other fiduciary; provided, however, that the person or entity serving as attorney-in-fact pursuant to this chapter shall, upon his request and absent cause to the contrary, be appointed the guardian or other fiduciary in a proceeding under Chapter 37 or Chapter 39 of this title.

(b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of his person, the attorney-in-fact is accountable to such guardian or other fiduciary as well as to principal as to any powers which the attorney-in-fact continues to hold. A guardian or other fiduciary shall only have such powers to revoke or amend the powers of the attorney-in-fact as shall be given to such guardian or other fiduciary by the court.

§ 4904. Notice required for revocation.

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke nor terminate the agency as to the attorney-in-fact, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a

durable power does not revoke nor terminate the agency as to the attorney-in-fact, or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

§ 4905. Effect of affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time, the occurrence of an event other than an expressed revocation or a change in the principal's capacity.

Del. Code Ann. tit. 12, §§ 4901 to 4905 (Cum. Supp. 1982) (effective June 21, 1982).

Florida

§ 709.08. Durable family power of attorney.

(1) A principal may create a durable family power of attorney designating his spouse, parent, child, whether natural or adopted, brother, or sister his attorney in fact by executing a power of attorney. Such power of attorney shall be in writing, shall state the relationship of the parties, and shall include the words, "This durable family power of attorney shall not be affected by disability of the principal except as provided by statute" or similar words clearly showing the intent of the principal that the power conferred on the attorney in fact shall be exercisable from the date specified in the instrument, notwithstanding a later disability or incapacity of the principal, unless otherwise provided by statute. All acts done by the attorney in fact pursuant to the power conferred during any period of disability or incompetence shall have the same effect, and inure to the benefit of and bind the principal or his heirs, devisees, and personal representatives, as if the principal were competent and not disabled.

(2) The durable family power of attorney shall be nondelegable and shall be valid until such time as the donor shall die, revoke the power, or be adjudged incompetent. At any

time, a petition to determine competency of the donor or a petition to appoint a guardian for the donor has been filed, the durable family power of attorney shall be temporarily suspended. Notice of the pending petition shall be given to all known donees of the power. The power shall remain suspended until the petition is dismissed, withdrawn, or the donor adjudged competent, at which time the power shall be automatically reinstated and any exercise of the power shall be valid. If the donor is adjudged incompetent, the power shall be automatically revoked.

(3) Property subject to the durable family power of attorney shall include all real and personal property owned by the donor, the donor's interest in all property held in joint tenancy, the donor's interest in all nonhomestead property held in tenancy by the entirety, and all property over which the donor holds a power of appointment. Nothing in this section shall permit the donee of a durable family power of attorney, when the donor is married, to mortgage or convey homestead property without the joinder of the spouse or the spouse's legal guardian, but the joinder may be accomplished through the exercise of a power of attorney.

(4) Whenever an emergency shall arise between the time a petition is filed and an adjudication is made regarding the competency of the donor, the donee of the durable family power of attorney may petition the court for permission to exercise the power. The petition shall specify the emergency, the property involved, and the proposed action of the donee. No exercise of the power by the donee during this time period shall be valid without the permission of the court.

Fla. Stat. § 709.08 (Cum. Pocket Part 1983) (effective Jan. 1, 1975; amended to add brothers and sisters as permissible family power of attorney June 17, 1977).

Georgia

§ 10-6-36. Effect of incompetency of principal on power of attorney.

A written power of attorney, unless expressly providing otherwise, shall not be terminated by the incompetency of the principal. The power to act as an attorney in fact for a principal who subsequently becomes incompetent shall remain in force until such time as a guardian or receiver shall be appointed for the principal or until some other judicial proceeding shall terminate the power.

Ga. Code Ann. § 10-6-36 (1982) (enacted 1973).

Hawaii

[Adopted the statute reprinted under Arizona.]
Hawaii Rev. Stat. § 560:5-501 (Supp. 1981) (enacted 1976).

Idaho

[Adopted the statute reprinted under Arizona.]
Idaho Code §§ 15-5-501 to 502 (1982).

Indiana

[Adopted the statute reprinted under Arizona, except that "guardian" is substituted for "conservator."]
Ind. Code § 30-2-1.5-1 (1981) (enacted 1976).

Iowa

§ 633.705. When power of attorney not affected by disability.

Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and his heirs, devisees, and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to

revoke the power of attorney on behalf of the principal.
Iowa Code Ann. § 633.705 (West 1983) (effective 1975).

Kansas

[Adopted the Uniform Durable Power of Attorney Act, with minor variations in wording.]

Kan. Stat. Ann. §§ 58-610 to 617 (Cum. Supp. 1981) (enacted April 4, 1980).

Kentucky

§ 386.093. When power of attorney not affected by disability.

When a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by the disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, then the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent, pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a fiduciary is thereafter appointed by the court for the principal the power of the attorney in fact shall thereupon terminate and he shall account to the court's appointed fiduciary.

Ken. Rev. Stat. Ann. § 386.093 (Baldwin 1982) (effective June 16, 1972).

Louisiana

All powers of attorney are durable unless they provide to the contrary. *See* Succession of McCrocklin, 242 La. 404, 137 So.2d 74 (1962).

Maine

[Adopted the statute reprinted under Arizona.]

Me. Rev. Stat. Ann. Tit. 18-A, § 5-501 (1964) (effective Jan. 1, 1981).

Maryland

§ 13-601. When power of attorney not affected by disability.

(a) Form and extent of power.—If a principal designates his attorney in fact or agent by a power of attorney in writing and the writing contains the words

(1) “This power of attorney shall not be affected by disability of the principal,” or

(2) “This power of attorney becomes effective upon the disability of the principal,” or

(3) Similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him notwithstanding the later disability of the principal or uncertainty whether the principal is dead or alive.

(b) Effect of acts performed for an incapacitated principal.—Any act done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive has the same effect and inures to the benefit of and binds the principal as if the principal were alive, competent, and not disabled.

(c) Appointment of guardian.—If a guardian is appointed for the principal, the attorney in fact or agent shall account to the guardian rather than the principal. The guardian has the same power the principal would have but for his disability or incompetence to revoke, suspend, or terminate all or any part of the power of attorney or agency.

Md. Est. & Trusts Code Ann. § 13-601 (1974) (enacted 1974).

Massachusetts

[Adopted the Uniform Durable Power of Attorney Act.]

Mass. Gen. Laws Ann. ch. 201B, §§ 1 to 7 (West 1981) (effective June 22, 1981).

Michigan

[Adopted the statute reprinted under Arizona, with minor variations in wording.]

Mich. Stat. Ann. § 27.5495 (Callaghan 1980).

Minnesota

[Adopted the statute reprinted under Arizona, with minor variations in wording.]

Minn. Stat. § 524.5-501 (West 1976) (effective Jan. 1, 1976).

Montana

[Adopted the statute reprinted under Arizona.]

Mont. Code Ann. §§ 75-5-501 to 502 (1981).

Nebraska

[Adopted the statute reprinted under Arizona.]

Neb. Rev. Stat. § 30-2662 (1979) (enacted 1974).

New Jersey

46:2B-8. Power of attorney unaffected by disability of principal according to its terms; accountability to guardian; disability defined

[Subsection (a) is identical to statute reprinted under Arizona.]

(b) A principal shall be under a disability if he is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

N.J. Stat. Ann §§ 46:2B-8 (West Cum. Supp. 1982-1983) (effective Jan. 1, 1972).

New Mexico

[Adopted the statute reprinted under Arizona, with minor variations in wording.]

N.M. Stat. Ann. § 45-5-501 (1978) (enacted 1975).

New York

§ 5-1601. Powers of attorney which survive disability or incompetence.

(1) The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by such principal which contains the words "This power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of such principal that the authority conferred shall be exercisable notwithstanding his subsequent disability or incompetence.

(2) All acts done by an attorney-in-fact pursuant to a power granted pursuant to subdivision one of this section during any period of disability or incompetence shall have the same effect and inure to the benefit of and bind a principal and his distributees, devisees, legatees and personal representatives as if such principal were competent and not disabled. If a committee or conservator thereafter is appointed for such principal, such attorney-in-fact, during the continuance of the appointment, shall account to the committee or conservator rather than to such principal. The committee or conservator shall have the same power such principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of such power of attorney.

N.Y. Gen. Oblig. Law § 5-1601 (McKinney 1978) (effective June 10, 1975).

North Carolina

§ 47-115.1. Appointment of attorney-in-fact which may be continued in effect notwithstanding incapacity or mental incompetence of the principal therein.

(a) Any person 18 years of age or more and mentally incompetent may as principal execute a power of attorney pursuant to the provisions of this section which shall continue in effect until revoked as hereinafter provided, notwithstand-

ing any incapacity or mental incompetence of such principal which occurs after the date of the execution and acknowledgment of the power of attorney.

(b) The power of attorney shall be in writing, signed by the principal under seal, acknowledged by the principal before an officer authorized to take the acknowledgment of deeds whose authority is recognized under the law of North Carolina in effect at the time of such acknowledgment, and delivered to the attorney-in-fact.

(c) The power of attorney shall contain a statement that it is executed pursuant to the provisions of this section, or shall contain such other language as shall clearly indicate the intention that the power of attorney shall continue in effect notwithstanding the incapacity or incompetence of the principal.

(d) No power of attorney executed pursuant to the provisions of this section shall be valid but from the time of registration thereof in the office of the register of deeds of that county in this State designated in the power of attorney, or if no place of registration is designated, in the office of the register of deeds of the county in which the principal has his legal residence at the time of such registration or, if the principal has no legal residence in this State at the time of registration or the attorney-in-fact is uncertain as to the principal's residence in this State, in some county in the State in which the principal owns property or the county in which one or more of the attorneys-in-fact reside. A power of attorney executed pursuant to the provisions of this section shall be valid from the time of registration thereof even though the time of such registration is subsequent to the mental incapacity or incompetence of the principal. Within 30 days after the registration of the power of attorney as above provided, the attorney-in-fact shall file with the clerk of the superior court in the county of such registration a copy of the power of attorney, but failure to file with the clerk shall not affect validity of the instrument.

(e) Every power of attorney executed pursuant to the provisions of this section shall be revoked by:

- (1) The death of the principal; or
- (2) The appointment of a guardian or trustee of the property in this State of the principal, and the registration of a certified copy of such appointment in the office of the register of deeds where the power of attorney has been registered; or
- (3) Registration in the office of the register of deeds where the power of attorney has been registered of an instrument of revocation executed and acknowledged by the principal while he is not incapacitated or mentally incompetent, or by the registration in such office of an instrument of revocation executed by any person or corporation who is given

such power of revocation in the power of attorney, with proof of service thereof in either case on the attorney-in-fact in the manner prescribed for service of summons in civil actions.

(f) Any person dealing in good faith with an attorney-in-fact acting under a power of attorney executed and then in effect under this section shall be protected to the full extent of the powers conferred upon such attorney-in-fact, and no person so dealing with such attorney-in-fact shall be responsible for the misapplication of any money or other property paid or transferred to such attorney-in-fact.

(g) Every attorney-in-fact acting under a power of attorney in effect under this section shall keep full and accurate records of all transactions in which he acts as agent of the principal and of all property of the principal in his hands and the disposition thereof.

(h) If the power of attorney provides for rendering inventories and accounts, such provisions shall govern. Otherwise, the attorney-in-fact shall file in the office of the clerk of the superior court of the county in which the power of attorney is registered, inventories of the property of the principal in his hands and annual and final accounts of the receipt and disposition of property of the principal and of other transactions in behalf of the principal. The power of the clerk to enforce the filing and his duties in respect to audit and recording of such accounts shall be the same as those in respect to the accounts of administrators, but the fees and charges of the clerk shall be computed or fixed only with relation to property of the principal required to be shown in the accounts and inventories. The fees and charges of the clerk shall be paid by the attorney-in-fact out of the principal's money or other property and allowed in his accounts. If the powers of an attorney-in-fact shall terminate for any reason whatever, he, or his executors or administrators, shall have the right to have a judicial settlement of a final account by any procedure available to executors, administrators or guardians.

(i) A power of attorney executed under this section may contain any provisions, not unlawful, relating to the appointment, resignation, removal and substitution of an attorney-in-fact, and to the rights, powers, duties and responsibilities of the attorney-in-fact.

(j) If all attorneys-in-fact named in the instrument or substituted shall die, or cease to exist, or shall become incapable of acting, and all methods for substitution provided in the instrument have been exhausted, such power of attorney shall cease to be effective. Any substitution by a person authorized to make it shall be in writing signed and acknowledged by such person. Notice of every other substitution shall be in writing signed and acknowledged by the person substituted. No substitution or notice shall be effective until it has been

recorded in the office of the register of deeds of the county in which the power of attorney has been recorded.

(k) In the event that any power of attorney executed pursuant to the provisions of this section does not contain the amount of commissions that the attorney-in-fact is entitled to receive or the way such commissions are to be determined, and the principal should thereafter become incompetent, the commissions such attorney-in-fact shall receive shall be fixed in the discretion of the clerk of superior court pursuant to the provisions of G.S. 28-170.

N.C. Gen. Stat. § 47-115.1 (Cum. Supp. 1981).

North Dakota

[Adopted the statute reprinted under Arizona.]

N.D. Cent. Code § 30.1-30-01 (1976) (enacted 1973).

Ohio

§ 1337.09. Written power of attorney regarding disability, incapacity, or incompetency of principal; effect.

Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains the words "this power of attorney shall not be affected by disability of the principal," or words of similar import, the authority of the attorney in fact is exercisable by him as provided in the written instrument notwithstanding the later disability, incapacity, or adjudged incompetency of the principal. All acts done by the attorney in fact pursuant to the written instrument during any period of disability, incapacity, or adjudged incompetency of the principal shall have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representatives as if the principal were competent and not disabled or incapacitated. If a guardian thereafter is appointed for the principal, the attorney in fact, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if not incompetent, to revoke all or any part of the power and the authority of the attorney in fact.

Ohio Rev. Code Ann. § 1337.09 (Page 1979) (effective July 12, 1976).

Oklahoma

§ 1051. Execution of power of attorney in anticipation of or because of infirmity—approval.

(a) If a person within this state, otherwise having capacity to contract, desires to execute a power of attorney in anticipation of or because of infirmity resulting from injury, old age, senility, blindness, disease or other related or similar cause as a means of providing for the care of his person or property, or both, he shall sign the instrument in the presence of and with the approval of the county judge of the county in which the person executing the instrument is a resident.

(b) The approval of the judge may be given only if (1) the principal requests approval, (2) the attorney in fact consents to serve, (3) the judge is satisfied, after any examination and investigation he deems appropriate, that the principal is a person covered by this act and reasonably understands the nature and purpose of the power, and that the attorney in fact is a suitable person to carry out the obligations imposed upon him, and (4) the provisions of this act have been observed. Approval may be given informally in chambers or other convenient place without the necessity of service of summons or other notice and shall be endorsed upon the face of the original of the instrument. The power is not invalidated by reason of any subsequent change in the mental or physical condition of the principal, including but not restricted to incompetency. The power remains valid until terminated as specified in Section 6.

§ 1052. Contents—powers granted.

(a) The power of attorney shall show or state (1) the fact of execution under the provisions of this act, (2) the time and the conditions under which the power is to become effective, (3) the extent and scope of the power conferred, (4) who is to exercise the power, (5) the annual income covered by the instrument and the nature or description and estimated value of the property, if any, to be affected; and may state the conditions and circumstances under which the power terminates.

(b) The power may be restricted or it may grant complete authority to provide for the care of the principal's person and property. Except to the extent limited by the instrument creating the power or to the extent that court approval is required by the instrument, the attorney in fact, without prior court approval, may endorse checks and other instruments made payable to the principal; may sell, encumber, lease, or otherwise manage the principal's property; and may execute and deliver deeds, conveyances, contracts, and other instruments necessary to carry out the power.

§ 1053. Attorney in fact—filing of power of attorney.

(a) The attorney in fact may be an individual, a corporation authorized by law to act in a fiduciary capacity, an agency of government, a Community Fund or United Fund participating agency, the American National Red Cross, or any similar charitable or benevolent agency found by the judge to be suitable thus to act.

(b) The original power of attorney shall be filed in the office of the clerk of the court whose judge approves the power. A certified copy shall be filed or recorded as may be appropriate in the office of the county clerk of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located.

§ 1055. Successor attorney in fact.

If the attorney in fact, or any successor, dies, ceases to act, refuses or is unable to serve, resigns, fails to maintain or replace a bond, or is removed for cause by a court, a successor attorney in fact may be appointed by the principal. If the principal, without having revoked the power of attorney, fails or is unable to appoint a successor within a reasonable time, a judge of the court which approved the power may appoint a successor, unless precluded from doing so by the provisions of the original power of attorney. The appointment of a successor attorney in fact shall be in writing. If the appointment is by the principal, it is subject to approval by a judge of the court which approved the original power. The original and certified copies of the appointment of the successor shall be filed or recorded as required for an original power of attorney.

§ 1056. Termination of power—persons dealing with attorney in fact—acts after termination.

(a) A power of attorney terminates on (1) written revocation by the principal, (2) death of the principal, (3) order of a court appointing a guardian of person or property, or both, of the principal, unless the order otherwise provides, or (4) expiration or termination as specified in the power of attorney.

(b) The original resignation of an attorney in fact or written revocation of the power of attorney by a principal, a certified copy of the death certificate of the principal¹ or of the attorney in fact or of any court judgment or order terminating the power of attorney or removing the attorney in fact for cause shall be filed promptly in the office of the clerk of the court whose judge approved the power; and certified copies shall be filed or recorded promptly in all offices in which a certified copy of the original power of attorney is filed or recorded. A notation of the terminating event shall be made by the clerk on the face of the original power of attorney.

(c) A person dealing with the attorney in fact is not required to inquire into the validity or adequacy of proceedings involving an approval, filing, or recording of the power of attorney, to determine if the principal or attorney in fact is

qualified or to determine whether the power may have been terminated if not yet shown by filing or recordation provided for in subsection (b). He is not required to inquire into the validity or propriety of any act of an attorney in fact apparently authorized by his approved power, or to assure the proper application by the attorney in fact of any money or property paid or delivered to him.

(d) The attorney in fact is liable to the principal and the principal's estate for all damage and loss the principal suffers because of the attorney's acts done after the attorney receives notice of the termination of his power or after termination by provision of the power itself. After his power is terminated, other than by death of the principal, he may perform such ministerial acts as may be reasonably necessary to complete and conclude his duties.

§ 1057. Standards of conduct and liability.

An attorney in fact is bound by standards of conduct and liability applicable to other fiduciaries.

§ 1058. Expenses—compensation.

An attorney in fact is entitled to reimbursement for his reasonable expenses incurred in the performance of his duties and, unless precluded by the power of attorney, to reasonable compensation for his services, payable out of the income and assets subject to the power. The amount of compensation and time of payment may be fixed in the power.

§ 1059. Accounting.

An attorney in fact shall account to the principal or his legal representative at times specified in the power of attorney and at any time directed by a judge of the approving court and upon termination of the power, and shall promptly deliver to the principal or his legal representative all property held by the attorney in fact upon termination of the power.

§ 1060. Other powers of attorney unaffected.

This act governs only powers of attorney executed under it. It does not affect powers of attorney executed under other statutes or the common law of this state.

§ 1061. Liberal construction.

The provisions of this act shall be liberally construed so as to effectuate its purposes.

§ 1062. Effect of acts of attorney—termination of power.

All powers of attorney other than those executed in anticipation of physical or mental infirmities shall be irrevocable if any such infirmity occurs only if the principal so states in the writing by which the power is granted. All acts done by the attorney in fact or agent pursuant to the power during any period of infirmity shall bind the principal. Any power of attorney so granted shall terminate on the written revocation by the principal, death of the principal, appointment of a

guardian of the person and/or property of the principal, unless the order of appointment otherwise provides, or upon its expiration or termination according to its terms.

Okla. Stat. Ann. tit. 58, §§ 1051 to 1062 (West 1983) (effective June 16, 1965).

Oregon

§ 126.407. When power of attorney not affected during period of disability; accounting to conservator.

(1) When a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing does not contain words which otherwise limit the period of time of its effectiveness, the powers of the attorney-in-fact or agent shall be exercisable by him on behalf of the principal notwithstanding the later disability or incompetence of the principal at law.

(2) All acts done by the attorney-in-fact or agent under the power of attorney during any period of disability or incompetence of the principal at law shall have the same effect and shall inure to the benefit of and bind the principal as though the principal were not disabled or incompetent.

(3) If a conservator is appointed thereafter for the principal, the attorney-in-fact or agent, during the continuation of that appointment, shall account to the conservator rather than to the principal. The conservator has the same power that the principal would have, but for his disability or incompetence, to revoke, suspend or terminate all or any part of the power of attorney or agency.

Ore. Rev. Stat. § 126.407 (1981) (enacted 1973).

Pennsylvania

§ 5601. When power of attorney not affected by disability.

Whenever a principal appoints another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent shall be exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All

acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive shall have the same effect and inure to the benefit of and bind the principal and his heirs, legatees, devisees and personal representative as if the principal were alive, competent and not disabled. If a guardian thereafter is appointed for the estate of the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian shall have the same power the principal would have had if he were not disabled or the principal would have had if he had not been adjudicated incompetent or had not created the power of attorney or agency. The guardian may either permit the attorney in fact to continue to act or revoke the power of attorney.

20 Pa. Cons. Stat. Ann. § 5601 (Purdon 1976) (effective Dec. 10, 1974).

South Carolina

§ 32-13-10. Power of attorney not to be terminated by physical disability or mental incompetence of principal.

Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate" showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his physical disability or mental incompetence, the authority of the attorney in fact is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or mental incompetence of the principal. All acts done by the attorney in fact pursuant to the power during any period of disability or mental incompetence shall have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees and personal representative as if the principal were mentally competent and not disabled. The attorney in fact shall have a fiduciary relationship with the principal and shall be accountable and responsible as a fiduciary. The appointment of a power of attorney under this section shall not prevent a person or his representative from applying to the court and having a committee appointed after which the power of attorney shall become inoperative. A power of attorney executed under the provisions of this section shall be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, the

instrument shall be probated and recorded in the same manner as a deed. Unless the instrument provides otherwise, the probate judge may, in his discretion, and at any time after the onset of mental disability, on motion of any interested party or his own motion, require that an inventory of all deposits, choses in action and personal property be filed with the court and a surety bond be posted by the attorney in fact in such manner and amount that would be applicable to a decedent's estate.

S.C. Code Ann. § 32-13-10 (Law Co-op. Cum. Supp. 1982) (effective Feb. 2, 1979).

South Dakota

§ 59-7-2.1. Continuing authority of agent notwithstanding disability of principal when intent shown.

Notwithstanding § 59-7-2, when a principal designates another as his attorney in fact or agent by a written power of attorney which contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding any later disability or incapacity of the principal or later uncertainty as to whether or not the principal is dead or alive.

§ 59-7.2.2. Recording of continuing power of attorney—force and effect—duration.

Such power of attorney may be recorded with a register of deeds specified in the power of attorney, and a certified copy thereof shall have the same force and effect as the signed original. It shall be effective for the purposes granted during the lifetime of the principal, unless revoked by a revocation recorded in the office of the register of deeds where the power of attorney was originally recorded.

§ 59-7-2.3. Binding effect of agent's acts under continuing power.

All acts done by an attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, administrators, executors and personal representatives, as if the principal were alive, competent and not disabled.

§ 59-7-2.4. Guardian appointed—accountability of agent to guardian during continuance of power—powers of guardian.

If a guardian of an estate is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. A guardian has the same power his principal would have had if he were not disabled or incompetent, to revoke, suspend or terminate all or any part of a power of attorney or agency.

S.D. Codified Laws Ann. §§ 59-7-2.1 to 59-7-2.4 (1978) (enacted 1977).

Tennessee

§ 66-5-105. Effect of mental or physical debility on power of attorney.

Any power of attorney, in effect on May 4, 1977 or created thereafter, granted by a person who is sui juris at the time will remain in full force and effect and will not be revoked by operation of law if such principal granting the power of attorney expressly provides therein that mental or physical debility shall not revoke said power.

Tenn. Code Ann. § 66-5-105 (1982) (enacted 1977).

Texas

§ 36A. When power of attorney not terminated by disability.

When a principal designates another his attorney in fact or agent by power of attorney in writing and the writing contains the words "this power of attorney shall not terminate on disability of the principal" or similar words showing the intent of the principal that the power shall not terminate on his disability, then the powers of the attorney in fact or agent shall be exercisable by him on behalf of the principal notwithstanding later disability or incompetence of the principal. All acts done by the attorney in fact or agent, pursuant to the power, during any period of disability or incompetence of the principal, shall have the same effect and shall inure to the benefit of and bind the principal as if the principal were not disabled or incompetent. If a guardian shall thereafter be appointed for the principal, the powers of the attorney in fact or agent shall terminate upon the qualification of the guardian, and the attorney in fact or agent shall deliver to the guardian all assets of the estate of the ward in his possession and shall account to

the guardian as he would to his principal had the principal himself terminated his powers.

Tex. Rev. Civ. Stat. Ann. art. 36A (Vernon 1980) (effective Jan. 1, 1972).

Utah

[Adopted the statute reprinted under Arizona.]
Utah Code Ann. § 75-5-501 (1978) (enacted 1975).

Vermont

[Adopted the statute reprinted under Arizona, except that “guardian” is substituted for “conservator.”]
Vt. Stat. Ann. tit. 14, § 3051 (1982) (enacted 1975).

Virginia

§ 11-9.1. When power of attorney, etc., not terminated by principal's disability.

Whenever any power of attorney or other writing, in which any principal shall vest any power or authority in an attorney in fact or other agent, shall contain the words “This power of attorney (or his authority) shall not terminate on disability of the principal” or other words showing the intent of the principal that such power or authority shall not terminate upon his disability, then all power and authority vested in the attorney in fact or agent by the power of attorney or other writing shall continue and be exercisable by the attorney in fact or agent on behalf of the principal notwithstanding any subsequent disability, incompetence, or incapacity of the principal at law; and all acts done by the attorney in fact or agent, pursuant to such power or authority, during the period of any such disability, incompetence or incapacity, shall have in all respects the same effect and shall inure to the benefit of, and bind the principal as fully as if the principal were not subject to such disability, incompetence or incapacity. If any guardian or committee shall thereafter be appointed for the principal, the attorney in fact or agent shall, during the continuance of such appointment, account to such guardian or committee as he would otherwise be obligated to account to the principal; and such guardian or committee shall have the

same right and power, which the principal would have in the absence of such disability, incompetence or incapacity, to revoke, suspend or terminate all or any part of the power and authority of the attorney in fact or agent.

§ 11-9.2. Powers of attorney not revoked, prior to their termination date, until actual notice of death or disability.

(a) No agency created by a power of attorney in writing given by a principal shall be revoked or terminated by the death or disability of the principal as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, has acted or acts, in good faith, under or in reliance on such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the principal or his heirs, devisees, legatees or personal representatives of the principal.

(b) An affidavit, executed by the attorney in fact or agent, setting forth that he has not, or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this State, such affidavit when authenticated for record in the manner prescribed by law shall likewise be recordable.

(c) This section shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney.

Va. Code §§ 11-9.1 through 11-9.2 (1978) (enacted 1954).

Washington

[Adopted the statute reprinted under Arizona, except that "guardian" is substituted for "conservator."]

Wash. Rev. Code § 11.94.010 (1982) (effective Oct. 1, 1974).

West Virginia

§ 27-11-6. Survival of powers of attorney following disability or incompetence.

(a) The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-

in-fact who acts under a power of attorney in a writing executed by such principal prior to such disability or incompetence if such writing contains the words "This power of attorney shall not be affected or terminated by the subsequent disability or incompetence of the principal," or words of similar import clearly showing the intent of such principal that the authority conferred in such writing shall be exercisable notwithstanding the subsequent disability or incompetence of such principal.

(b) All acts done by an attorney-in-fact pursuant to a power granted pursuant to subsection (a) of this section during any period of disability or incompetence shall have the same effect and inure to the benefit of and bind a principal and his distributees, devisees, legatees and personal representatives as if such principal were competent and not disabled.

(c) The power and authority granted in this section to an attorney-in-fact or other agent is terminated upon the appointment of a committee or conservator for the principal under other provisions of this Code.

(d) This section shall not be construed so as to alter or affect any provision for revocation or termination contained in any written power of attorney.

W.Va. Code § 27-11-6 (1982) (enacted 1980).

Wisconsin

[Adopted the Uniform Durable Power of Attorney Act.]

Wis. Stat. Ann. § 243.07 (West 1982) (effective May 1, 1982).

Wyoming

§ 34-9-101. Execution of instrument; approval of judge.

(a) Instrument to be signed in presence of judge; subsequent change in condition of principal.

If a resident of or person within this state desires to execute a power of attorney in anticipation or because of infirmity resulting from injury, old age, senility, blindness, disease, or other related or similar cause as a means of providing for the care of his person or property, or both, he shall sign the instrument in the presence of and with the approval of a judge of the district court of the district in which the power is executed. The power is not invalidated by reason of any subsequent change in the mental or physical condition of the principal, including but not restricted to incompetency.

(b) Approval of judge.

The approval of the judge may be given only if:

(i) The principal requests approval;

(ii) The attorney-in-fact consents to serve;

(iii) The judge is satisfied, after any examination and investigation he deems appropriate, that the principal is a person covered by this act [§§ 34-9-101 to 34-9-110] and reasonably understands the nature and purpose of the power, and that the attorney-in-fact is a suitable person to carry out the obligations imposed upon him; and

(iv) The provisions of this act have been observed.

(c) Endorsement of approval, etc.

Approval may be given informally in chambers or other convenient place without the necessity of service of summons or other notice and shall be endorsed upon the face of the original of the instrument. The power remains valid until terminated as provided in this act.

§ 34-9-102. Contents of instrument; limitations on power; authority of attorney.

(a) Contents.

The power of attorney shall show or state:

(i) The fact of execution under the provisions of this act;

(ii) The time and the conditions under which the power is to become effective;

(iii) The extent and scope of the power conferred;

(iv) Who is to exercise the power; and

(v) The annual income covered by the instrument and the nature or description and estimated value of the property, if any, to be affected; and may state the conditions and circumstances under which the power terminates.

(b) Limitations on power; authority of attorney.

The power may be restricted or it may grant complete authority to provide for the care of the principal's person and property. Except to the extent limited by the instrument creating the power or to the extent that court approval is required by the instrument, the attorney-in-fact without prior court approval may endorse checks and other instruments made payable to the principal; may sell, encumber, lease, or otherwise manage the principal's property; and may execute and deliver deeds, conveyances, stock and bond transfers, contracts, and other instruments necessary to carry out the power.

§ 34-9-103. Who may be attorney-in-fact; filing; filing fees.

(a) Who may be attorney-in-fact.

The attorney-in-fact may be an individual, a corporation authorized by law to act in a fiduciary capacity, an agency of

government, a community fund or united fund participant agency, or the American National Red Cross.

(b) Filing, copies.

The original power of attorney shall be filed in the office of the clerk of the court whose judge approves the power. A certified copy shall be filed or recorded in the office of the county clerk of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located.

(c) Filing fees.

The clerk of court shall collect a filing fee of five dollars (\$5.00) at the time of the filing of a power of attorney if the estimated gross value of the property as set forth in the power of attorney exceeds five thousand dollars (\$5,000.00) or if the annual money income exceeds one thousand dollars (\$1,000.00). If the annual money income is less than one thousand dollars (\$1,000.00) and the gross value of the property is less than five thousand dollars (\$5,000.00), then no filing fee should be collected. The clerk of court shall record and index all powers of attorney in the same manner as papers relating to estates of incompetents are recorded and indexed.

§ 34-9-104. Limitation on value of property or income.

(a) A power of attorney executed under authority of this act [§§ 34-9-101 to 34-9-110] which grants powers concerning property or income shall be approved only if limited to:

(i) Property having a gross value not exceeding fifty thousand dollars (\$50,000.00), excluding the capitalized value of any annual income; or

(ii) An annual money income covered by the instrument not exceeding three thousand dollars (\$3,000.00). A performance bond shall not be filed unless required by a provision of the power.

§ 34-9-105. Appointment of successor attorneys.

If the attorney-in-fact or any successor dies, ceases to act, refuses or is unable to serve, resigns, fails to maintain or replace a bond, or is removed for cause by a court, a successor attorney-in-fact may be appointed by the principal. If the principal, without having revoked the power of attorney, fails or is unable to appoint a successor within a reasonable time, a judge of the court which approved the power may appoint a successor, unless precluded from doing so by provisions of the original power of attorney. The appointment of a successor attorney-in-fact shall be in writing. If the appointment is by the principal, it is subject to approval by a judge of the court which approved the original power. The original and certified copies of the appointment of the successor shall be filed or recorded as required for an original power of attorney.

§ 34-9-106. Termination of power; inquiries into validity of power; liability of attorney-in-fact.

(a) When power terminates.

A power of attorney terminates on:

(i) Written revocation by the principal;

(ii) Death of the principal;

(iii) Order of a court appointing a guardian, conservator, or committee of the person or property or both of the principal, unless the order otherwise provides;

(iv) Expiration or termination as specified in the power of attorney; or

(v) A determination by a judge of the approving court that the value of the property or the amount of the annual money income covered by the instrument has so increased that this act [§§ 34-9-101 to 34-9-110] is no longer appropriately applicable.

(b) Filing, etc., of instrument terminating power.

The original resignation of an attorney-in-fact, a written revocation of the power of attorney by a principal, or a certified copy of the death certificate of the principal or of the attorney-in-fact or of any court judgment or order terminating the power of attorney or removing the attorney-in-fact for cause, shall be filed promptly in the office of the clerk of the court whose judge approved the power, and certified copies shall be filed or recorded promptly in all offices in which a certified copy of the original power of attorney is filed or recorded. A notation of the terminating event shall be made by the clerk on the face of the original power of attorney.

(c) Inquiries into validity of power.

A person dealing with the attorney-in-fact is not required to inquire into the validity or adequacy of proceedings involving an approval, filing or recording of the power of attorney, to determine whether the power may have been terminated if not yet shown by filing or recordation under subsection (b). He is not required to inquire into the validity or propriety of any act of an attorney-in-fact apparently authorized by his approved power, or to assure the proper application by the attorney-in-fact of any money or property paid or delivered to him.

(d) Liability of attorney; conclusion of duties.

The attorney-in-fact is liable to the principal and the principal's estate for all damage and loss the principal suffers because of the attorney's acts done after the attorney received notice of the termination of his authority or after termination by provision of the power itself. After the power is terminated, he may perform ministerial acts reasonably necessary to complete and conclude his duties.

§ 34-9-107. Limitation on liability.

Unless otherwise provided in the power of attorney, an attorney-in-fact is not liable to his principal or his legal representative except for his intentional wrongdoing or fraud. He is not liable for any wrongdoing of parties with whom he deals in good faith.

§ 34-9-108. Compensation and reimbursement for expenses of attorney-in-fact.

An attorney-in-fact is entitled to reimbursement for his reasonable expenses incurred in the performance of his duties, and, unless precluded by the power of attorney, to reasonable compensation for his services, payable out of the income and assets subject to the power. The amount of compensation and time of payment may be fixed in the power.

§ 34-9-109. Accounting of attorney-in-fact.

An attorney-in-fact shall account to the principal or his legal representative at time specified in the power of attorney, at any time directed by a judge of the approving court, and upon termination of the power or his authority; and he shall deliver promptly to the principal, his legal representative, or a successor attorney-in-fact all property held by him as attorney-in-fact upon termination of the power or his authority.

§ 34-9-110. Scope.

This act governs only powers of attorney executed under it. It does not affect powers of attorney executed under other statutes or the common law of this state.

Wyo. Stat. § 34-9-101 to 110 (1977) (enacted 1965).

Other Proposed Uniform Statutes

Uniform Law Commissioners' Model Health-Care Consent Act*

§ 1. Definitions.

As used in this [Act]:

- (1) "Adult" means an individual [18] or more years of age.
- (2) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.
- (3) "Health-care provider" means a person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession.
- (4) "Minor" means an individual who is not an adult.
- (5) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.

§ 2. Individuals who may consent to health care.

Unless incapable of consenting under Section 3, an individual may consent to health care for himself if he is:

- (1) an adult; or
- (2) a minor and
 - (i) is emancipated,
 - (ii) has attained the age of [14] years and, regardless of the source of his income, is living apart from his parents or from an individual in loco parentis and is managing his own affairs,
 - (iii) is or has been married,
 - (iv) is in the military service of the United States, or
 - (v) is authorized to consent to the health care by any other law of this State.

§ 3. Individuals incapable of consenting.

An individual otherwise authorized under this [Act] may consent to health care unless, in the good faith opinion of the health-care provider, the individual is incapable of making a decision regarding the proposed health care.

§ 4. Individuals who may consent to health care for others.

(a) If an individual incapable of consenting under Section 3 has not appointed a health-care representative under Section 6 or the health-care representative appointed under Section 6 is

* National Conference of Commissioners on Uniform State Law, approved and recommended for enactment in all the states at its annual conference, Monterey, California, July 30-Aug. 6, 1982.

not reasonably available or declines to act, consent to health care may be given:

(1) by a guardian of his person, a representative appointed under Section 7, or a representative designated or appointed under other law of this State;

(2) by a spouse, parent, adult child, or adult sibling, unless disqualified under Section 8, if there is no guardian or other representative described in paragraph (1) or he is not reasonably available or declines to act, or his existence is unknown to the health-care provider.

(b) Consent to health care for a minor not authorized to consent under Section 2 may be given:

(1) by a guardian of his person, a representative appointed under Section 7, or a representative designated or appointed under other law of this State;

(2) by a parent or an individual in loco parentis, if there is no guardian or other representative described in paragraph (1) or he is not reasonably available or declines to act, or his existence is unknown to the health-care provider;

(3) by an adult sibling of the minor, if a parent or an individual in loco parentis is not reasonably available, declines to act, or his existence is unknown to the health-care provider.

(c) An individual delegated authority to consent under Section 5 has the same authority and responsibility as the individual delegating the authority.

(d) A person authorized to consent for another under this section shall act in good faith and in the best interest of the individual incapable of consenting.

§ 5. Delegation of power to consent to health care for another.

(a) An individual authorized to consent to health care for another under Section 4(a)(2), 4(b)(2) or 4(b)(3) who for a period of time will not be reasonably available to exercise the authority may delegate the authority to consent during that period to another not disqualified under Section 8. The delegation must be in writing and signed and may specify conditions on the authority delegated. Unless the writing expressly provides otherwise, the delegate may not delegate the authority to another.

(b) The delegate may revoke the delegation at any time by notifying orally or in writing the delegate or the health-care provider.

§ 6. Health-care representative: appointment; qualification; powers; revocation and responsibility.

(a) An individual who may consent to health care under Section 2 may appoint another as a health-care representative to act for the appointor in matters affecting his health care.

(b) A health-care representative appointed under this section must be an individual who may consent to health care under Section 2.

(c) An appointment and any amendment thereto must be in writing, signed by the appointor and a witness other than the health-care representative and accepted in writing by the health-care representative.

(d) The appointor may specify in the writing terms and conditions considered appropriate, including an authorization to the health-care representative to delegate the authority to consent to another.

(e) The authority granted becomes effective according to the terms of the writing.

(f) The writing may provide that the authority does not commence until, or terminates when, the appointor becomes incapable of consenting. Unless expressly provided otherwise, the authority granted in the writing is not affected if the appointor becomes incapable of consenting.

(g) Unless the writing provides otherwise, a health-care representative appointed under this section who is reasonably available and willing to act has priority to act for the appointor in all matters of health care.

(h) In making all decisions regarding the appointor's health care, a health-care representative appointed under this section shall act (i) in the best interest of the appointor consistent with the purposes expressed in the appointment and (ii) in good faith.

(i) A health-care representative who resigns or is unwilling to comply with the written appointment may exercise no further power under the appointment and shall so inform (i) the appointor, (ii) the appointor's legal representative, if one is known, and (iii) the health-care provider, if the health-care representative knows there is one.

(j) An individual who is capable of consenting to health care may revoke: (i) the appointment at any time by notifying the health-care representative orally or in writing, or (ii) the authority granted to the health-care representative by notifying the health-care provider orally or in writing.

§ 7. Court-ordered health care or court-ordered appointment of a representative.

(a) A health care provider or any interested individual may petition the [_____] court to (i) make a health-care decision or order health care for an individual incapable of consenting or (ii) appoint a representative to act for that individual.

[(b) Reasonable notice of the time and place of hearing a petition under this section must be given to the individual

incapable of consenting and to individuals in the classes described in Section 4 who are reasonably available.

(c) The court may modify or dispense with notice and hearing if it finds that delay will have a serious, adverse effect upon the health of the individual.]

(d) The court may order health-care, appoint a representative to make a health-care decision for the individual incapable of consenting to health care with such limitations on the authority of the representative as it considers appropriate, or order any other appropriate relief in the best interest of that individual, if it finds:

(1) a health-care decision is required for the individual;

(2) the individual is incapable of consenting to health care; and

(3) there is no individual authorized to consent or an individual authorized to consent to health care is not reasonably available, declines to act, or is not acting in the best interest of the individual in need of health care.

§ 8. Disqualification of authorized individuals.

(a) An individual who may consent to health care for himself under Section 2 may disqualify others from consenting to health care for him.

(b) The disqualification must be in writing, signed by the individual, and designate those disqualified.

(c) A health-care provider who knows of a written disqualification may not accept consent to health care from a disqualified individual.

(d) An individual who knows he has been disqualified to consent to health care for another may not act for the other under this [Act].

§ 9. Limitations of liability.

(a) A health-care provider acting or declining to act in reliance on the consent or refusal of consent of an individual who he believes in good faith is authorized by this [Act] or other law of this State to consent to health care is not subject to criminal prosecution, civil liability, or professional disciplinary action on the ground that the individual who consented or refused to consent lacked authority or capacity.

(b) A health-care provider who believes in good faith an individual is incapable of consenting under Section 3 is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to follow that individual's direction.

(c) A person who in good faith believes he is authorized to consent or refuse to consent to health care for another under this [Act] or other law of this State is not subject to criminal

prosecution or civil liability on the ground he lacked authority to consent.

§ 10. Availability of medical information.

An individual authorized to consent to health care for another under this Act has the same right as does the individual for whom he is acting to receive information relevant to the contemplated health care and to consent to the disclosure of medical records to a contemplated health-care provider. [Disclosure of information regarding contemplated health care to an individual authorized to consent for another is not a waiver of an evidentiary privilege.]

§ 11. Effect on existing state law.

(a) This [Act] does not affect the law of this State concerning an individual's authorization to make a health-care decision for himself or another to withdraw or withhold medical care necessary to preserve or sustain life.

(b) This [Act] does not affect the requirements of any other law of this State concerning consent to observation, diagnosis, treatment or hospitalization for a mental illness.

(c) This [Act] does not authorize an individual to consent to any health care prohibited by the law of this State.

(d) This [Act] does not affect any requirement of notice to others of proposed health care under any other law of this State.

(e) This [Act] does not affect the law of this State concerning (i) the standard of care of a health-care provider required in the administration of health care, (ii) when consent is required for health care, (iii) informed consent for health care, or (iv) consent to health care in an emergency.

(f) This [Act] does not prevent an individual capable of consenting to health care for himself or another under this [Act], including those authorized under Sections 4, 5 and 6, from consenting to health care administered in good faith pursuant to religious tenets of the individual requiring health care.

§ 12. Severability.

If any provisions of this [Act] or the application hereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

§ 13. Uniformity of application and construction.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

§ 14. Short title.

This [Act] may be cited as the Uniform Law Commission-
er's Model Health-Care Consent Act.

§ 15. Repeal.

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

§ 16. Time of taking effect.

This [Act] shall take effect _____.

The Uniform Right to Refuse Treatment Act*

§ 1. Definitions

"Competent person" shall mean an individual who is able to understand and appreciate the nature and consequences of a decision to accept or refuse treatment.

"Declaration" shall mean a written statement executed according to the provisions of this Act which sets forth the declarant's intentions with respect to medical procedures, treatment or nontreatment, and may include the declarant's intentions concerning palliative care.

"Declarant" shall mean an individual who executes a declaration under the provisions of this Act.

"Health care provider" shall mean a person, facility or institution licensed to provide health care.

"Incompetent person" shall mean a person who is unable to understand and appreciate the nature and consequences of a decision to accept or refuse treatment.

"Medical procedure or treatment" shall mean any action taken by a physician or health care provider designed to diagnose, assess, or treat a disease, illness, or injury. These include, but are not limited to, surgery, drugs, transfusions, mechanical ventilation, dialysis, resuscitation, artificial feeding, and any other medical act designed for diagnosis, assessment or treatment.

"Palliative care" shall mean any measure taken by a physician or health care provider designed primarily to maintain the patient's comfort. These include, but are not limited to, sedatives and pain-killing drugs; non-artificial, oral feeding; suction; hydration; and hygienic care.

* Legal Advisory Committee (Chairman, George J. Annas, JD, MPH), Concern for Dying, 250 West 57th Street, New York, N.Y. 10101 (May 1982).

"Physician" shall mean any physician responsible for the declarant's care.

§ 2. A competent person has the right to refuse any medical procedure or treatment, and any palliative care measure.

§ 3. A competent person may execute a declaration directing the withholding or withdrawal of any medical procedure or treatment or any palliative care measure, which is in use or may be used in the future in the person's medical care or treatment, even if continuance of the medical procedure or treatment could prevent or postpone the person's death from being caused by the person's disease, illness or injury. The declaration shall be in writing, dated and signed by the declarant in the presence of two witnesses. The two witnesses must sign the declaration, and by their signatures indicate they believe the declarant's execution of the declaration was understanding and voluntary.

§ 4. If a person is unable to sign a declaration due to a physical impairment, the person may execute a declaration by communicating agreement after the declaration has been read to the person in the presence of the two adult witnesses. The two witnesses must sign the declaration, and by their signatures indicate the person is physically impaired so as to be unable to sign the declaration, that the person understands the declaration's terms, and that the person voluntarily agrees to the terms of the declaration.

§ 5. A declarant shall have the right to appoint in the declaration a person authorized to order the administration, withholding, or withdrawal of medical procedures and treatment in the event that the declarant becomes incompetent. A person so authorized shall have the power to enforce the provisions of the declaration and shall be bound to exercise this authority consistent with the declaration and the authorized person's best judgment as to the actual desires and preferences of the declarant. No palliative care measure may be withheld by an authorized person unless explicitly provided for in the declaration. Physicians and health care providers caring for incompetent declarants shall provide such authorized persons all medical information which would be available to the declarant if the declarant were competent.

§ 6. Any declarant may revoke a declaration by destroying or defacing it, executing a written revocation, making an oral revocation, or by any act evidencing the declarant's specific intent to revoke the declaration.

§ 7. A competent person who orders the withholding or withdrawal of treatment shall receive appropriate palliative care unless it is expressly stated by the person orally or through a declaration that the person refuses palliative care.

§ 8. This act shall not impair or supersede a person's legal right to direct the withholding or withdrawal of medical treatment or procedures in any other manner recognized by law.

§ 9. No person shall require anyone to execute a declaration as a condition of enrollment, continuation, or receipt of benefits for disability, life, health or any other type of insurance. The withdrawal or withholding of medical procedures or treatment pursuant to the provisions of this Act shall not affect the validity of any insurance policy, and shall not constitute suicide.

§ 10. This act shall create no presumption concerning the intention of a person who has failed to execute a declaration. The fact that a person has failed to execute a declaration shall not constitute evidence of that person's intent concerning treatment or nontreatment.

§ 11. A declaration made pursuant to this Act, an oral refusal by a person, or a refusal of medical procedures or treatment through an authorized person, shall be binding on all physicians and health care providers caring for the declarant.

§ 12. A physician who fails to comply with a written or oral declaration and to make necessary arrangements to transfer the declarant to another physician who will effectuate the declaration shall be subject to civil liability and professional disciplinary action, including license revocation or suspension. When acting in good faith to effectuate the terms of a declaration or when following the direction of an authorized person appointed in a declaration under Section 5, no physician or health care provider shall be liable in any civil, criminal or administrative action for withholding or withdrawing any medical procedure, treatment, or palliative care measure. When acting in good faith, no witness to a declaration, or person authorized to make treatment decisions under Section 5, shall be liable in any civil, criminal or administrative action.

§ 13. A person found guilty of willfully concealing a declaration, or falsifying or forging a revocation of a declaration, shall be subject to criminal prosecution for a misdemeanor [the class or type of misdemeanor is left to the determination of individual state legislatures].

§ 14. Any person who falsifies or forges a declaration, or who willfully conceals or withholds information concerning the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures from a person, and who thereby causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be subject to criminal prosecution for a felony [the class or type of felony is left to the determination of individual state legislatures].

§ 15. If any provision or application of this act is held invalid, this invalidity shall not affect other provisions or applications

of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Medical Treatment Decision Act, Michigan House Bill No. 4492 (1981)*

A bill to confirm the right to accept or refuse medical treatment; to provide for the appointment of agents and prescribe their powers and duties; to prescribe certain criminal and civil liabilities; and to provide for certain immunities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

§ 1.

This act shall be known and may be cited as the "medical treatment decision act."

§ 2.

As used in this act:

(a) "Adult person" means a legally competent individual who has attained the age of majority.

(b) "Age of majority" means the age prescribed in section 2 of Act No. 79 of the Public Acts of 1971, being section 722.52 of the Michigan Compiled Laws.

(c) "Agent" means an adult person who is appointed and who accepts an appointment pursuant to section 4.

(d) "Attending physician" means the physician selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(e) "Medical treatment" means a medication, surgical procedure, mechanical life-support system, or other medical therapeutic procedure or device administered by a physician or performed by another health care professional under the direction of a physician.

(f) "Physician" means a person licensed to practice medicine or osteopathic medicine and surgery under article 15 of Act No. 368 of the Public Acts of 1978, as amended, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws.

§ 3.

(1) An adult person has the right to accept or refuse medical treatment in accordance with that person's wishes or desires. This right includes a refusal of medical treatment which would extend the person's life.

* March 26, 1981, Introduced by Reps. Hollister, Stabenow, Gilmer, Leland, Fitzpatrick, Padden, Jondahl, Evans, and Nash and referred to the Committee on Public Health.

(2) An adult person may appoint an agent who will act on behalf of the appointor if, due to a condition resulting from illness or injury and in the judgment of the attending physician, the appointor becomes incapable of making a decision in the exercise of the right to accept or refuse medical treatment.

(3) An agent may accept or refuse medical treatment for the appointor, if in the judgment of the attending physician the appointor is incapable of making the decision. This authority shall include the right to refuse medical treatment which would extend the appointor's life. An agent authorized to make decisions under this act has a duty to act in good faith and with due regard for the interest and benefit of the appointor. If an agent makes a decision to accept or refuse medical treatment for the appointor, the agent's decision shall be recorded in the appropriate medical record.

(4) The authority of an agent shall not be operative in an emergency situation, if in the judgment of the physician providing or directing the medical treatment of the patient, immediate, initial care is urgently needed to stabilize the patient's condition in response to an unanticipated, acute illness or injury.

(5) The authority of an agent shall not be operative if a court has ordered or authorized medical treatment for the appointor under chapter 4, 5, or 6 of Act No. 258 of the Public Acts of 1974, as amended, being sections 330.1400 to 330.1497, 330.1500 to 330.1541, or 330.1600 to 330.1642 of the Michigan Compiled Laws.

§ 4.

(1) An adult person may appoint an agent to accept or refuse medical treatment on behalf of the appointor by signing a document to that effect. An adult person may appoint alternate agents to serve if the first named agent is unavailable. Only a single agent shall have authority for medical decision making at a time. With respect to medical treatment for an appointor, the decision of an agent shall prevail over that of a guardian of the person appointed by the probate court, except as provided in section 3(5). The order of authority shall devolve to alternate agents in the order prescribed in the document.

(2) The document shall conform to the following form:

"Appointment of Agent for Medical Treatment Decision
I, the undersigned, this _____ day of _____, 19 _____, being of sound mind, willfully and voluntarily appoint (legal name), whose current telephone number and address are (telephone number), (street and number), (city and state), to accept or refuse medical treatment on my behalf and in my interest if, due to a condition resulting from illness or injury, and in the judgment of the attending physi-

cian, I become incapable of making a decision in exercise of my right to accept or refuse medical treatment.

If the appointee named in the preceding paragraph is unavailable to make a decision, I appoint (legal name), whose current telephone number and address are (telephone number), (street and number), (city state), as an alternate agent to make the decision.

Signed _____

Address _____

The person signing this document is known to me, and I believe him or her to have wilfully and voluntarily signed this document.

Witness _____

Address _____

date _____

Witness _____

Address _____

date _____

Acceptance by Agent or Alternate Agent, or Both

As agent or alternate agent I understand that acceptance of this appointment means that I have a duty to act in good faith and with due regard for the interest and benefit of the person appointing me:

Agent's signature _____

date _____

Alternate agent's signature _____

date _____ . "

(3) The adult person appointing an agent or an agent and 1 or more alternate agents pursuant to subsection (2) shall prepare copies of the document for each agent and alternate agent. After the appointor individually signs each copy and the signature is witnessed, the copies shall be presented to the agent and alternate agents. Upon signing the document, the agent shall be eligible to assume the authority and duties prescribed in section 3(3). One copy shall be kept by the appointor and each agent or alternate agent. A duplicate of the signed copies may be given to a physician or to other persons according to the wishes of the appointor. The agent may refuse to accept this authority, at any time following receipt of the document, by writing a statement to that effect on the document and returning the document to the appointor. If the appointor of the document comes into the care of a physician who does not possess a copy, and the conditions for effectuating the agreement are considered to be present, the agent or alternate agent shall provide the attending physician with a copy of the signed agreement. The attending physician can make the document a part of the medical record.

(4) For purposes of this section, if the appointor is institutionalized in, or receiving care at, an extended care facility, nursing home, or hospital, a witness to the appointment of an agent or alternate agent shall not have a proprietary interest in, nor be an employee of, or a person acting on behalf of, the facility, nursing home, or hospital.

(5) A person who is a representative, employee, or officer of a private or public agency, organization, or institution shall not accept appointment as an agent or serve as an agent solely because of that person's capacity as a representative, employee, or officer.

§ 5.

(1) An appointor may revoke the appointment at any time, regardless of mental state or competency, by writing a statement of revocation, by defacing or destroying the document, or by making an oral statement of revocation in the presence of 2 or more witnesses.

(2) A subsequent appointment made by signing a document described in section 4 shall operate to revoke a prior appointment.

(3) A person who has knowledge of a revocation shall notify the attending physician, the agent, and the alternate agent.

§ 6.

(1) An agent who makes a decision regarding the acceptance or refusal of medical treatment for the appointor shall not be civilly or criminally liable for the act of accepting or refusing medical treatment, or for the consequences of the act, if both of the following conditions are met:

(a) The agent makes the decision in accordance with the degree of care reasonably expected of a person who has a duty to act in good faith and with due regard for the interest and benefit of the appointing person.

(b) The agent's decision does not violate this act or the civil or criminal laws of this state.

(2) An agent shall not be civilly or criminally liable for failure to observe a revocation made pursuant to section 5 unless that agent had actual knowledge of the revocation.

§ 7.

(1) A person who is not an agent, and who attempts to act as an agent or otherwise represents himself or herself as an agent, is criminally liable for the attempted action or the representation.

(2) A person who knowingly conceal a revocation of his or her appointment as an agent and who attempts to act as an agent or otherwise represents himself or herself as agent, is criminally liable for the attempted action or the representation.

(3) A person who falsely represents himself or herself as an agent or who knowingly conceals a revocation of his or her appointment as an agent, and who gives instructions for the refusal of medical treatment with the intent of hastening a patient's death, is liable for prosecution for homicide.

§ 8.

(1) A person shall not accept remuneration for services performed as an agent under this act.

(2) A person shall not solicit another to be appointed as the latter's agent under this act.

(3) A person who violates this section is guilty of a misdemeanor.

§ 9.

(1) This act shall not preclude an adult person from preparing written instructions for his or her medical treatment. The written instructions are advisory and are evidence of the person's wishes and interests. However, if the adult person appoints an agent, the decision of the agent shall prevail over written instructions prepared pursuant to this section.

(2) The written instructions shall be signed by the originator of the instructions in the presence of 2 witnesses who, by their signatures, shall affirm that the originator wilfully and voluntarily signed the instructions.

(3) For purposes of this section, if the person preparing and signing the written instructions is institutionalized in, or receiving care at, an extended care facility, nursing home, or hospital, a witness to the signing of the written instructions shall not have a proprietary interest in, nor be an employee or person acting on behalf of, the facility, nursing home, or hospital.

(4) An adult person who prepares and signs written instructions pursuant to this section may revoke the instructions at any time, regardless of mental state or competency, by writing a statement of revocation, by defacing or destroying the instructions, or by making an oral statement of revocation in the presence of 2 or more witnesses.

(5) The preparation and signing of written instructions shall operate to revoke any prior written instructions.

(6) If the person preparing and signing written instructions has not appointed an agent, a physician or other health care professional acting under the direction of a physician shall not be civilly or criminally liable for acting in accordance with written instructions, if following the written instructions does not violate this act or the civil or criminal laws of this state.

§ 10.

(1) A person shall not be required to appoint an agent issuance of an insurance policy or as a condition to receiving health care services.

(2) The appointment of an agent or the preparation and signing of written instructions pursuant to section 9 shall not restrict the sale, procurement, or issuance of an insurance policy. The appointment of an agent or the preparation and signing of written instructions shall not be considered to modify the terms of an existing insurance policy. An insurance policy shall not be impaired or invalidated by the withholding or withdrawal of medical treatment pursuant to this act, notwithstanding a term of the policy to the contrary.

§ 11.

(1) The death of an adult person which results from or follows the withholding or withdrawal of medical treatment pursuant to this act shall not constitute a suicide.

(2) This act shall not be construed to condone, authorize, or approve mercy killing or suicide.

§ 12.

(1) A physician or other health care professional acting under the direction of a physician who administers, withholds, or withdraws medical treatment upon the request of a person reasonably believed to be an agent shall not be civilly or criminally liable for the act of administering, withholding, or withdrawing the medical treatment if the request of the agent does not violate this act or the civil or criminal laws of this state. The burden of proof regarding the reasonable belief of the physician or other health care professional acting under the direction of a physician with regard to the identity of the agent shall be upon the person contesting the reasonable belief.

(2) A physician or other health care professional acting under the direction of a physician who fails to observe a refusal of medical treatment or a request for continued medical treatment by an agent shall be legally liable in the same manner and degree as would have been the case if the appointor had been capable of making the decision and had refused or requested the treatment in his or her own right under similar circumstances.

§ 13.

Health care personnel shall not be required to participate in the treatment or care of a patient pursuant to this act, if they find the treatment or care morally objectionable, and if they withdraw from the case after informing the patient or agent, or both, and other appropriate health care personnel of their withdrawal and after finding a replacement.

§ 14.

This act shall not affect the rights of a person to accept or refuse medical treatment, if that person has neither appointed an agent nor prepared and signed written instructions pursuant to section 9.

§ 15.

(1) The circuit court has jurisdiction over an action to remove an agent appointed under this act. A relative or guardian of the appointor, a physician providing medical treatment to the appointor, or an officer or employee of a health facility or institution at which the appointor is receiving medical treatment may bring an action to seek temporary or permanent removal of an agent who fails to act in a manner consistent with the authority and duties prescribed in section 3(3) and 6(1). The plaintiff shall bear the burden of proof in an action brought under this subsection.

(2) The circuit court has jurisdiction over an action contesting the interpretation or validity of written instructions prepared and signed pursuant to section 9.

(3) A party to a proceeding brought under this section may request an expedited hearing as provided by court rule.

Hospital Ethics Committees: Proposed Statute and National Survey

F

A Model Bill to Establish Hospital Ethics Committees*

§ 1: Definitions

A) Hospital. "Hospital" includes any facility that provides in-patient care.

B) Treatment. "Treatment" includes both life-prolonging and life-saving procedures, whether surgical, pharmaceutical or mechanical.

C) Incompetent Patient. "Incompetent patient" includes an adult person without sufficient mental capacity or reason to understand the nature and consequences of a medical procedure offered when the person must decide whether to accept or reject that procedure.

D) Case Record. "Case Record" means that record that the hospital ethics committee assembles when it reviews a decision made by or for a patient. The case record includes the patient's medical record, a summary of the opinions of consulting physicians, the hospital ethics committee meeting minutes, and the hospital ethics committee's written recommendation.

§ 2: Scope of the Hospital Ethics Committee's Authority

A) Any hospital may establish a hospital ethics committee ("committee").

* The Model Bill presented here was prepared for the American Society of Law & Medicine (765 Commonwealth Ave., 16th Floor, Boston, Mass. 02215) by Mary Beth Prosnitz of the Boston University School of Law Legislative Services. The Society does not necessarily recommend or support the positions or approach contained therein.

B) The committee shall perform the following functions:

1) Review treatment decisions made on behalf of terminally ill incompetent patients, and review treatment decisions made by terminally ill competent patients who request committee review.

The committee shall confirm the competence of the patient and shall determine whether the patient has a terminal illness. The committee shall discuss the decision with the patient, the patient's family, the responsible physician and the patient's guardian, if the patient has received a court appointed guardian. The committee may consult with any additional physicians or specialists it desires during its review of the treatment decision. The committee shall arrive at a non-binding advisory recommendation describing the appropriate treatment for the patient. If the incompetent patient's family, the responsible physician or the incompetent patient's guardian disagree with the committee's recommendation, or if the competent patient disagrees with the committee's recommendation, the committee shall refer the case to a court of proper jurisdiction for resolution. If the committee refers a case to court for resolution, the committee shall submit its case record to the court.

2) Review medical decisions having ethical implications.

Any competent patient, member of a patient's family, physician or hospital staff person may request committee review of any medical decision made in the hospital that has ethical implications. The committee shall grant each request for review unless another hospital agency can review the decision more effectively. The committee shall inform the patient whose case it reviews of the committee's consideration of his/her case. The committee shall discuss the decision with the patient, the patient's family, the responsible physician and the patient's guardian, if the patient has received a court appointed guardian. In addition, the committee shall discuss the case with the hospital staff person if that person requested committee review of the decision. The committee may consult with any additional physicians or specialists it desires during its review of the decision. The committee shall arrive at a non-binding advisory recommendation describing the appropriate course of action for the patient. If the competent patient's decision and the committee's recommendation disagree, the committee shall refer the case to a court of proper jurisdiction for resolution. If the committee refers a case to a court for resolution, the committee shall submit its case record to the court.

- 3) **Provide counseling.** Any patient, member of a patient's family, physician, or hospital staff person may approach the committee or any of its members for social, psychological, spiritual or other counseling. The committee or the individual committee member shall provide the requested counseling or shall refer the person requesting counseling to another person or agency qualified to provide the requested counseling.
- C) The committee may perform the following functions:
- 1) **Establish guidelines.** The committee may establish guidelines regarding treatment or any other medical decisions in cooperation with the hospital staff, administration and local professional organizations.
 - 2) **Provide education.** The committee may sponsor or conduct educational programs designed to inform the hospital staff, administration and the general public about ethical problems in the health care field.

S 3: Immunity.

A) Committee members shall have complete civil and criminal immunity from liability for committee recommendations made within the scope of the committee's authority, provided that the committee operates according to the provisions set forth in Section 4.

B) The hospital staff, administration and the responsible physician shall have the benefit of a presumption of freedom from civil and criminal liability for their actions taken in accordance with the committee's recommendation. Proof of gross negligence or wilful disregard of the patient's interests overcomes this presumption.

S 4: Administration.

A) Committee members.

1) **Composition of the committee.** The committee shall consist of nine members: two physicians, one an internist, the other a subspecialist; an attorney; a hospital administrator; a social worker; a psychiatrist; a member of the clergy; an advocate for patients; and a hospital volunteer or other appropriate representative of the community served by the hospital.

2) **Selection of committee members.** The chief hospital administrator shall request nominations for committee memberships from the hospital staff. The chief hospital administrator shall then appoint nine committee members from the group of nominees. The chief hospital administrator shall ensure that the nine members represent the nine positions listed in Section 4 A)1) above, but he/she may appoint members for the committee who do not serve on the hospital staff if a particular discipline has no members among the hospital staff.

3) **Term.** Each committee member shall serve a term of one year on the committee, though any member may serve more than one term as a committee member. The chief hospital administrator shall establish a system of staggered terms for the committee members so that no more than three member's terms expire on the same date.

B) Committee proceedings.

- 1) The committee may draft its own by-laws consistent with this statute and may appoint officers.
- 2) The committee shall convene within three days of a request for committee review of a treatment or other medical decision.
- 3) The committee shall keep minutes of its meetings. These minutes shall summarize the deliberations of the committee made in arriving at a recommendation.
- 4) The committee shall arrive at a recommendation by majority vote.
- 5) Any patient, member of a patient's family, physician, or hospital staff person may attend committee meetings for the purpose of presenting issues for the committee's consideration. Only committee members shall attend that part of the committee meeting during which the committee members discuss the case in an attempt to reach a recommendation.

C) Notice.

- 1) The hospital shall inform all patients admitted to the hospital about the committee and its functions and the means of patient access to the committee.
- 2) The committee shall place a copy of its recommendation in the patient's hospital record. The responsible physician shall verbally inform the patient of the committee's recommendation in an appropriate manner, taking the patient's mental status and physical condition into consideration.
- 3) The person who requested committee review of a treatment or other medical decision shall receive a copy of the committee's recommendation.

A National Survey of Hospital Ethics Committees*

Introduction

American medicine and society in general have, in the past decade, been forced to confront a growing problem: deciding whether to withhold or withdraw increasingly sophisticated life-support systems from patients whose future quality of life is questionable. Such decisionmaking inevitably raises complicated clinical questions, as well as legal, ethical, and social issues. The formation of hospital "ethics" committees (also referred to as prognosis, terminal care, and/or optimum care committees) has been one response to the problem. Little is known about the number and specific roles of these committees. Robert Veatch points out, "Hospital ethics committees are a new development, and it is still unclear which types will gain support and how they will evolve." This study is a preliminary attempt to assess the prevalence, stated purposes, operating characteristics, and perceived effectiveness of "ethics" committees in hospitals across the continental United States.

Background

Unlike Institutional Review Boards (established by mandate according to Federal guidelines) or the early hemodialysis committees (specifically created to select patients to receive a scarce medical resource), hospital ethics committees arose independently, for a variety of reasons.

The New Jersey Supreme Court's 1976 ruling on the Karen Quinlan case was one of the early influences on the formulation of ethics committees. The Court said that the patient's guardian, family, and physician

shall consult with the hospital "Ethics Committee" or like body of the institution in which Karen is then hospitalized. If that consultative body agrees that there is no reasonable possibility of Karen's ever emerging from her present comatose condition to a cognitive

* by Stuart J. Youngner, M.D. (Assistant Professor of Psychiatry), David L. Jackson, M.D., Ph.D. (Associate Professor of Medicine and Neurology and Director, Center for the Critically Ill), Claudia Coulton, Ph.D. (Associate Professor, School of Applied Social Sciences), Barbara W. Juknialis, M.A. (Research Associate, Center for the Critically Ill), and Era Smith (Research Assistant, Center for the Critically Ill), all from Case Western Reserve University School of Medicine, Cleveland, Ohio. This survey was done under contract with the President's Commission.

¹ Robert M. Veatch, *Hospital Ethics Committees: Is There a Role?*, 7 *HASTINGS CTR. REP.* 22, 25 (June 1977).

sapient state, the present life-support system may be withdrawn and said action shall be without any civil or criminal liability therefore on the part of any participant, whether guardian, physician, hospital or others.²

The New Jersey Supreme Court's effort to clarify the decisionmaking process has received considerable criticism. George Annas considered the decision "legal comfort for doctors," and commented further, "Its looseness of language and potential for abuse demand to be exposed and discussed."³ Carol Levine stated, "Ethics committees have received much attention as an aftermath of the Quinlan decision, but confusion rather than clarification has been the result."⁴

By calling it an "ethics" committee but assigning it a prognostic function, the Court has created confusion about the committee's role. Robert Veatch,⁵ and Harold Hirsch and Richard Donovan⁶ explore its possible roles--e.g., determine prognosis; make ethically sound decisions; give counseling and support to medical staff, patients, and families; make larger ethical policy decisions for hospitals; provide legal protection for physicians and hospitals. The problems attending each of these roles have been identified and discussed.

There is concern that committee composition and membership, as well as access to committee meetings, will be dominated and controlled by health professionals—especially physicians. The perceived danger is that health professionals may have values or interests that potentially conflict with those of their patients. Such a conflict of interest may lead to decisions that protect the interests of health professionals or institutions, rather than those of patients. Furthermore, committees, by their very nature, may have detrimental effects by diffusing responsibility and failing to be responsive to crisis situations demanding immediate decisions.

A group from Massachusetts General Hospital in Boston reported on the intended role and actual functioning of one such committee,⁷ which had met 21 times in three years.⁸ Its main benefits were "clarification of misunderstanding about

² *In re Quinlan*: 70 N.J. 10, 355 A.2d 647, 671 cert. denied, 429 U.S. 922 (1976).

³ George J. Annas, *In re Quinlan: Legal Comfort for Doctors*, 7 HASTINGS CTR. REP. 29, 31 (JUNE 1976).

⁴ Carol Levine, *Hospital Ethics Committees: A Guarded Prognosis*, 7 HASTINGS CTR. REP. 25, 26 (JUNE 1977).

⁵ Veatch, *supra* note 1.

⁶ Harold L. Hirsch and Richard Donovan, *The Right to Die: Medico-Legal Implications of In re Quinlan*, 30 RUTGERS L. REV. 267 (1977).

⁷ *Optimum Care for Hopelessly Ill Patients: A Report of the Clinical Care Committee of the Massachusetts General Hospital*, 295 NEW ENG. J. MED. 362 (1976).

⁸ Levine, *supra* note 4, at 26.

the patient's prognosis, reopening of communication, re-establishment of unified treatment objectives and rationale, restoration of the sense of shared responsibility for patient and family, and, above all, maximizing support for the responsible physician who makes the medical decision..."⁹

Methodology

Definition of Committees. An ethics committee, as defined in this study, had to have the potential to become involved in the decisionmaking process in specific cases. The committee's involvement had to precede any final decision about withholding or withdrawing life support in an individual case. The nature of this involvement was not specified, nor were committees with additional functions (e.g., policymaking or teaching) excluded.

Sampling Procedure. The study sample was drawn from the list of 6186 hospitals registered with the American Hospital Association; this figure represents more than 97% of the total number of hospitals in the United States. Freestanding psychiatric and rehabilitation hospitals were excluded from the listed population.

A disproportional, stratified random sampling procedure was used. The population of hospitals was divided into two strata based on the number of acute care beds. A random sample of 202 hospitals was drawn from the population of 4354 small (200 or fewer beds) hospitals. Four hundred hospitals were randomly selected from the population of 1832 large (more than 200 beds) hospitals. Hospital characteristics were taken from the American Hospital Association's Guide.¹⁰

This sampling procedure was designed to increase the potential number of committees eligible for our later, detailed survey of committee functioning. Since it was expected that substantially more committees would be found in large hospitals, more of them were included in the study. Because of this disproportional sampling procedure, estimates of population parameters had to be based on a reweighted sample.

Design and Measures. Data collection involved two phases. First, the hospitals in the sample were contacted by telephone to determine whether there was an ethics committee. Questions were directed to the Chief of Staffs office, the Director of Nursing, or some member of the hospital administration. As a reliability check, two of the investigators tele-

■ *Optimum Care for Hopelessly Ill Patients: A Report of the Clinical Care Committee of the Massachusetts General Hospital*, supra note 7, at 364.

¹⁰ AMERICAN HOSPITAL ASSOCIATION GUIDE TO THE HEALTH CARE FIELD, American Hospital Association, Chicago (1981).

phoned the Medical Chiefs of Staff of a random subsample of 30 hospitals—none of which had reported having committees in the initial survey. There was 100% agreement between first and second contacts. This increased the probability that the data were not confounded by false negative responses.

Additional measures were employed to minimize false positive responses. One of the investigators had a phone conversation with the chairperson of each ethics committee identified in the initial survey. This contact verified the existence and function of the committee and requested the chairperson to complete a detailed questionnaire on the committee's functions. The verification eliminated 2 of the 25 hospitals initially identified as having committees. In both cases, the committees were only involved in long-range policy decisions. Detailed questionnaires were then sent to the remaining 23 committee chairpersons. After reviewing the completed questionnaires, 6 more committees were eliminated as false positives because they did not meet our criteria.

The questionnaire included questions about the committee's structure, procedures, activities, and effectiveness. Most questionnaire items were taken from the survey instrument developed and tested by the authors for use in a comprehensive study of a local ethics committee. Test-retest studies on this instrument demonstrated that at least 80% of the respondents gave the same answer to each item on both occasions. All multi-item scale reliabilities exceeded .80 (coefficient alpha). The response rate for the questionnaire portion of the study was 100%.

Results

Prevalence and Distribution of Committees. Ethics committees were found in 17 (4.3%) of the 400 sample hospitals with more than 200 beds. There were no ethics committees found in the 202 hospitals with fewer than 200 beds. The smallest hospital with a committee had 235 beds; several hospitals with more than 1000 beds did not have committees. After weighting the sample elements to compensate for disproportionate probability of inclusion, we estimate that approximately 1% of all hospitals in the United States have ethics committees.

The ethics committees identified in this study were clustered in the Northeast and Atlantic states, the industrial Midwest, and the Far West (see Table F1). Seven (41%) of the hospitals with committees were in New Jersey; this group comprises 39% of the New Jersey hospitals with more than 200 beds which were sampled.

Hospitals with Committees versus Hospitals without Committees. Larger hospitals, particularly those with teaching programs, were the most likely to have ethics committees:

64.7% of the hospitals with committees were teaching hospitals; only 35.2% of the entire sample had teaching programs. The mean number of beds in the hospitals with committees was 485, compared with a mean of 298 in hospitals without committees. Religious affiliation and public versus private administration did not significantly affect the likelihood of having a committee.

Characteristics of Committees. Physicians were the most prevalent members of ethics committees, accounting for approximately 57% of the total membership; three committees were composed entirely of physicians. The majority of committees (14) included at least one member of the clergy and two or three members of other professions. Hospital administrators were more frequently represented than nurses. The various categories of health professionals are listed in Table F2, ranked according to the frequency of committee membership. Committee size ranged from 3 to 23 members, with a median of 8.

The typical ethics committee was formed in 1977, although one was established in 1973 and another in 1982 (mean number of years in existence = 5.7). Committees reviewed an average of approximately one case per year. Three recently established committees had reviewed no cases. The most frequently utilized committee was formed in 1973, and reviewed an average of 2.25 cases per year.

The **Quinlan** decision prompted the formation of 71% of the committees in New Jersey, but only 10% of those in other states. As shown in Table F3, most committees were based on several formally stated purposes that tended to coincide with the actual committee activities. Most committees' deliberations resulted in consultation and advice (81.3%) rather than binding decisions. Committees generally communicated advice as a committee consensus (62.5%), as opposed to having members state their individual opinions (18.8%).

Committee meetings were generally open to responsible physicians, clergy, social workers, and nurses (see Table F4). The right to request a committee meeting was usually limited to attending physicians and to patients' families. Guidelines permitted patient attendance in 19% of the committees; patients could request meetings in 25% of the committees.

Perceived Effectiveness of Committees. Uniformly positive responses were given to questions about committee effectiveness. Major reported benefits were: facilitating decisionmaking by clarifying important issues (73.3%); providing legal protection for hospital and medical staff (60%); shaping consistent hospital policies with regard to life support (56.3%); providing opportunities for professionals to air disagreements (46.7%). Increasing patients' and families' abilities to influence decisions and educating professionals about issues relevant to life-

support decisions were areas in which committees were generally viewed as less effective.

This generally positive view of committee functioning was corroborated by responses to a usefulness index, calculated from the answers to 8 questions, with a possible total score range of 8-40. Actual scores ranged from 29-40. Scores of 24 and above reflected a very positive assessment of the committee's value.

Conclusions

Our study resulted in two important conclusions about hospital "ethics" committees:

(1) They have not been widely adopted as a means of handling medical ethical problems. Only 1% of the hospitals in this country—none with fewer than 200 beds—have such committees. Furthermore, committees that do exist are not involved in large numbers of cases. Existing committees reviewed an average of only one case per year.

(2) The composition and function of committees identified in this survey would not allay many of the concerns of patients' rights advocates about patient representation and control. Committees were clearly dominated by physicians and other health professionals. The majority of committees did not allow patients to attend or request meetings, although family members were more often permitted to do so. Yet chairmen generally regarded their committees as effective.

Although these may have been "defensive" evaluations, many felt their committees had helped clarify important issues, shape consistent policies, provide opportunities to air disagreements, and protect hospitals and health professionals from legal actions.

Hospitals without committees seemed generally interested in and aware of medical ethical issues. Comments such as "We are working on it" or "Send us your results, maybe they will help us decide what to do" were common. A committee member from a hospital not included in our study suggested that the low number of meetings did not accurately reflect the committee's full impact. "Our committee meetings served as a model. Now each Intensive Care Unit meets to discuss difficult cases. They do not need to call the committee any longer."¹¹

With no clear mandate from the courts, legislatures, or Federal government, 1% of U.S. hospitals have established

¹¹ Personal communication from Elizabeth Heckathorn, R.N., who served on the Ethics Committee at Massachusetts General Hospital, to Stuart Youngner (March 26, 1981).

ethics committees to help make decisions about withholding or stopping life support. Furthermore, the committees identified in this study reviewed very few cases. Although the explanation of these findings is beyond the scope of this study, it is worth pursuing. Were these committees established merely for "cosmetic" reasons? Are there important political and social forces in hospitals that have hampered their formation and function? Or are they simply neither needed nor useful? Have hospitals found other formal or informal mechanisms for solving ethical dilemmas? Will publicity about "successful" committees lead to their wider use? More detailed studies are needed to answer these important questions.

Table F1:

Geographic Distribution of Hospital with Committees

Location ¹	Number of Hospitals with Committees
Northeast/Atlantic	
Massachusetts (20)	1
New Jersey (18)	7
Pennsylvania (34)	1
Maryland (10)	1
Industrial Midwest	
Illinois (31)	1
Michigan (24)	1
West Coast	
California (56)	2
Oregon (4)	1
Midwest	
Kansas (11)	1
Missouri (11)	1

¹ Numbers in parentheses refer to the total number of hospitals surveyed in the state.

Table F2:

Committee Membership

Member Category	Median Number of Members Per Committee	Number (and Percent) of Committees Reporting At Least One Member in This Category
Physician	5.25	17 (100%)
Clergy	1.05	14 (82%)
Administrator	.58	9 (53%)
Nurse	.44	8 (47%)
Attorney	.35	7 (41%)
Social worker	.21	5 (29%)
Laypersons	.15	4 (24%)
House officers	.07	2 (12%)
Other	.07	2 (12%)

Table F3:
Committee Purpose

Purpose	Percent Classifying This as a Stated Purpose'	Percent Classifying This as an Actual Function'
Provide counsel and support to physicians	59% (10)	69% (11)
Make ethical/social policy for care of critically ill	47% (8)	38% (6)
Review ethical issues in patient care decisions	53% (9)	56% (9)
Provide counsel and support to other professionals	35% (6)	31% (5)
Determine medical prognosis	29% (5)	25% (4)
Provide counsel and support to patients and families	28% (5)	31% (5)
Make final decisions about life support	16% (3)	31% (5)
Determine continuing education needs	18% (3)	18% (3)
Other	12% (2)	12% (2)

• Numbers in parentheses refer to frequency of response.

Table F4:

Persons Involved in Convening and Attending Meetings

Category	Percent Indicating This Person Could Attend Meetings*	Percent Indicating This Person Could Request a Meeting*
Physician in charge of case	100% (16)	100% (16)
Clergy	50% (9)	31% (5)
Social Worker	50% (8)	19% (3)
Nurse	50% (8)	31% (5)
Patient's family	44% (7)	62% (10)
Lawyer for patient/family	38% (6)	25% (4)
Other physician	25% (4)	38% (6)
Patient	19% (3)	25% (4)
Medical students	12% (2)	12% (2)
Other person	19% (3)	19% (3)

* Numbers in parentheses refer to frequencies. Percentages are adjusted for missing data.

PCOMA STUDY QUESTIONNAIRE

Institution: _____ Date: _____

Respondent: _____

1. What is the name of the ethics committee at your institution?
2. When was it established--i.e. month, year? _____
3. Since its formation, how many cases have been reviewed by your committee? _____
4. How many committee members are there, and what are their professions?

- a. Number of physicians _____
- b. Number of nurses _____
- c. Number of house officers _____
- d. Number of administrators _____
- e. Number of clergy _____
- f. Number of psychiatrists _____
- g. Number of social workers _____
- h. Number of lawyers _____
- i. Number of psychologists _____
- j. Number of lay persons _____
- k. Other (specify) _____

TOTAL NUMBER OF MEMBERS _____

5. Who initiated the formation of your ethics committee? (Check all that apply)

- a. Administration _____
- b. Physicians _____
- c. Nurses _____
- d. Other (specify) _____
- e. Don't Know _____

- 6A. What do you believe was the primary stimulus for the formation of the committee (Choose one)

- a. The Quinlan decision _____
- b. Clinical need _____
- c. Ethical need _____
- d. Other (specify) _____
- e. Don't Know _____

If "b" or "c" are selected, what was the specific need? _____

- 6B. To what extent does your committee meet this need? (Choose one)

- a. Completely _____
- b. Mostly _____
- c. Partially _____
- d. Not at all _____
- e. Don't Know _____

454 Foregoing Life-Sustaining Treatment: Appendix F

- 7A. What is the committee's formally stated purpose? (Choose all that apply. Feel free to make additions to the list as appropriate.)
- a. To determine medical prognosis
 - b. To review ethical issues in patient care decisions in order to make appropriate recommendations for changes
 - c. To provide counsel and support to patients/families
 - d. To provide counsel and support to physicians
 - e. To provide counsel and support to other health professionals
 - f. To make ethical and/or social policy for the care of seriously ill and dying patients treated at the hospital
 - g. To determine continuing educational needs of personnel involved in patient care in the area of terminal care
 - h. To make the final decision about continuing life support
 - i. Other (specify) _____
 - j. Don't Know
- 7B. Which of the following purposes have actually been served by the committee? (Choose all that apply)
- a. To determine medical prognosis
 - b. To review ethical issues in patient care decisions in order to make appropriate recommendations for changes
 - c. To provide counsel and support to patients/families
 - d. To provide counsel and support to physicians
 - e. To provide counsel and support to other health professionals
 - f. To make ethical and/or social policy for the care of seriously ill and dying patients treated at the hospital
 - g. To determine continuing educational needs of personnel involved in patient care in the area of terminal care
 - h. To make the final decision about continuing life support
 - i. Other (specify) _____
8. What role does your committee play in decisionmaking? (Choose one)
- a. Provides consultation and advice
 - b. Makes the final decision
 - c. Both a and b
 - d. Don't Know
9. If your committee is advisory, how is the advice given? (Choose one)
- a. The committee chairperson communicates a "consensus"
 - b. Each committee member communicates his/her own opinion
 - c. Both a and b
 - d. Other (specify) _____
 - e. Don't Know
 - f. Not Applicable
10. If your committee makes decisions, how are they made? (Choose one)
- a. Simple majority vote
 - b. Unanimous vote
 - c. Other (specify) _____
 - d. Don't Know
 - e. Not Applicable

11. Who is officially permitted to request a committee meeting? (Choose all that apply)

- a. Physician in charge of the case
- b. Any physician
- c. Nurse
- d. Medical students
- e. Clergy
- f. Lawyer representing patient or family
- g. Patient's family
- h. Social worker
- i. Patient
- j. Other (specify) _____
- k. Don't Know

12. Who is officially permitted to attend the committee meetings? (Choose all that apply)

- a. Physician in charge of the case
- b. Any physician
- c. Nurse
- d. Medical students
- e. Clergy
- f. Lawyer representing patient or family
- g. Patient's family
- h. Social worker
- i. Patient
- j. Other (specify) _____
- k. Don't Know

13A. How has your committee affected the frequency of court involvement in life support decisions?

- a. Increased frequency of court involvement
- b. No impact on court involvement
- c. Decreased frequency of court involvement
- d. Don't Know

13B. Do you consider this a beneficial or detrimental effect?

Beneficial Detrimental Don't Know

Explain:

14A. How has your committee affected the frequency of decisions to withhold or discontinue life support?

- a. Increased frequency of such decisions
- b. No impact on frequency of such decisions
- c. Decreased frequency of such decisions
- d. Don't Know

14B. Do you consider this a beneficial or detrimental effect?

Beneficial Detrimental Don't Know

Explain:

456 Foregoing Life-Sustaining Treatment: Appendix F

15A. How has your committee affected the speed with which life support has been discontinued?

- a. Increased the speed
- b. No impact on the speed
- c. Decreased the speed
- d. Don't Know

15B. Do you consider this a beneficial or detrimental effect?

Beneficial Detrimental Don't Know

Explain:

16A. Please rank the following groups according to the amount of help received from the committee. Use "1" to indicate the group that received the greatest amount of help; "4" indicates the group that received the least help.

- Nurses
- Physicians
- Patients' Families
- Patients

16B. Please explain the ways in which the committee has been helpful or detrimental to each of these groups:

Nurses

Physicians

Patients' Families

Patients

17. What kind of effect has your committee had on each of the following?

A. Shaping or evolving consistent hospital policies with regard to life support

Beneficial No Impact Detrimental Don't Know

B. Educating professional staff about the important issues involved in life support

Beneficial No Impact Detrimental Don't Know

C. Facilitating decisionmaking by clarifying important issues

Beneficial No Impact Detrimental Don't Know

D. Providing legal protection for hospital and medical staff

Beneficial No Impact Detrimental Don't Know

De-

- E. Providing an opportunity for health professionals who usually have less power in decisionmaking than physicians to air disagreements, give input, and receive explanations

Beneficial No Impact Detrimental Don't Know

- F. Increasing the ability of individual patients and families to influence the decisionmaking process

Beneficial No Impact Detrimental Don't Know

- 18. In which of the areas mentioned in Question 17 has the committee had the most positive impact? (Enter the letter preceding the appropriate item in Question 17.)
- 19. In which of the areas mentioned in Question 17 has the committee had the most negative impact? (Enter the letter preceding the appropriate item in Question 17.)

The following statements deal with the Committee's usefulness in cases that have been reviewed. For each question, please check the answer that best reflects your opinion. (SA-strongly agree; A=agree; U=undecided; D-disagree; SPstrongly disagree)

SA A U D SD

The Committee has:

- 20. Provided support for families making difficult decisions.
- 21. Increased stress for staff.
- 22. Increased stress for families.
- 23. Provided legal protection for the hospital and medical staff.
- 24. Provided support for staff making difficult decisions.
- 25. Been a waste of time.
- 26. Stirred up trouble among staff.
- 27. Come up with good answers to tough questions.
- 28. What has been the committee's overall effect on patient care? (Choose one)
 - a. Very beneficial
 - b. Somewhat beneficial
 - c. No impact
 - d. Somewhat detrimental
 - e. Very detrimental
 - f. Don't Know
- 29. Do you have any other comments about the functions and effect of such committees?

Permanent Loss of Consciousness: Expert Opinion and Community Standards

G

Expert Opinion*

This is in follow-up of our telephone conversation of December 18 in which you asked my informed opinion about prognosis in patients with so-called "permanent loss of consciousness" or what might be called the vegetative state.

As you know, there are only a limited number of published data on this subject. Included in the figures are some from Jennett's study of head injury, some from our own studies of nontraumatic coma, a series published from Japan, and a few reasonably well verified anecdotal reports. The results of all this material can be stated in the following manner:

1. Prognosis in permanently unconscious patients varies somewhat according to the nature of the underlying disease. In patients with traumatic brain damage, especially younger patients, a small number, perhaps 5%, can recover from such states lasting as long as 4-6 weeks. If complete unconsciousness lasts for longer than that period, I know of no evidence of a subject who has improved beyond the level of severe disability, and very few of the latter exist.

2. In ischemic brain injury, good recovery after a period of complete unconsciousness longer than two weeks is very rare, and longer than one month probably does not occur in more than a fraction of 1%. Even those few in whom late evidence of cognitive awareness has reappeared had to be classified as

* Letter from Dr. Fred Plum (Anne Parrish Titzell Professor of Neurology, Cornell University Medical College; Neurologist-in-Chief, The New York Hospital, New York, N.Y.) to Dr. Joanne Lynn regarding reliability of prognosis for permanently unconscious patients (Dec. 22, 1981).

having a severe disability both from the standpoint of physical and intellectual residua. I know of no example of such a patient who has returned to what can be considered independent intellectual or motor function. Wakefulness, of course, in the sense of having sleep and wake cycles, returns in almost all these subjects.

3. In conditions such as brain tumor, Alzheimer's disease, or other progressive dementias, loss of consciousness for a period lasting as long as one month dictates a hopeless prognosis. I suppose it is conceivable that such a patient could be overmedicated for a period of that duration, but I know of no example either by direct contact or anecdotal report of such a patient who has ever recovered any measure of cognition when all consciousness had been lost for a continuous period of 30 days or more.

In my experience, a major problem in this area lies with poor medical diagnosis. Many patients who are severely disoriented, agitated, or locked-in are sometimes called unconscious by physicians. The statements above, of course, can only apply when the diagnosis is secure.

If I can expand on these comments in any way, I will be pleased to. In the meantime, I hope this has been useful. Please call me if there are any questions.

Sincerely,
(signed)
Fred Plum, M.D.

Community Standards

Guidelines for Discontinuance of Cardiopulmonary Life-Support Systems under Specified Circumstances*

A. The general principles which should govern decision-making in this area are:

1. It is the right of a person capable of giving informed consent to make his or her own decision regarding medical care after having been fully informed about the benefits, risks and consequences of available treatment, even when such a decision might foreseeably result in shortening the individual's life.

2. Persons who are unable to give informed consent have the same rights as do persons who can give such consent. Decisions made on behalf of persons who cannot give their own informed consent should, to the extent possible, be the decisions which those persons would have made for themselves had they been able to do so. Parents (or the guardians) of a minor child, or the conservator of an adult patient, must consent to the decision. Family members of adult patients should always be consulted, although they have no legal standing under present California law to make such decisions on behalf of the patient.

3. A physician may discontinue use of a cardiopulmonary life-support system (i.e. mechanical respirator or ventilator), and is not required to continue its use indefinitely solely because such support was initiated at an earlier time.

4. The dignity of the individual must be preserved and necessary measures to assure comfort be maintained at all times.

5. It is the right of individual physicians to decline to participate in the withdrawal of life-support systems. In exercising this right, however, the physician must take appropriate steps to transfer the care of the patient to another qualified physician.

B. Three sets of circumstances in which decisions to discontinue the use of cardiopulmonary life-support systems can be made without the necessity of prior approval by the courts are:

1. **Brain death.** Section 7180 of the California Health and Safety Code states: "A person shall be pronounced dead if it is determined by a physician that the person has suffered a total and irreversible cessation of brain function." This statute also requires that a second physician independently confirm the

* Developed by the Joint Ad Hoc Committee on Biomedical Ethics of the Los Angeles County Medical Association and the Los Angeles County Bar Association

death and that neither physician be involved in decisions regarding transplantation of organs.

a. The physicians should document in the medical record the basis for the diagnosis of brain death.

b. The patient should be pronounced brain dead before disconnecting the respirator or ventilator.

c. It is desirable to explain the brain death law to family members and other interested persons before this procedure is implemented.

2. **California Natural Death Act.** Sections 7185 through 7195 of the California Health and Safety Code (the California Natural Death Act) provide that cardiopulmonary life-support systems must be withdrawn from patients who have signed a "valid and binding" Directive to Physicians. For further information, physicians should consult the Guidelines on the California Natural Death Act adopted by the California Medical Association and the California Hospital Association (CHA). These guidelines are reproduced in the CHA Consent Manual.

3. **Irreversible Coma*** Cardiopulmonary life-support systems may be discontinued if all of the following conditions are present:

a. The medical record contains a written diagnosis of irreversible coma, confirmed by a physician who by training or experience is qualified to assist in making such decisions. The medical record must include adequate medical evidence to support the diagnosis;

b. The medical record indicates that there has been no expressed intention on the part of the patient that life-support systems be initiated or maintained in such circumstances, and

c. The medical record indicates that the patient's family, or guardian or conservator, concurs in the decision to discontinue such support.

Adopted by the Council of the Los Angeles County Medical Association on March 2, 1981 and by the Board of Trustees of the Los Angeles Bar Association on March 11, 1981.

* While paragraph B(1) and B(2), dealing with brain death and the California Natural Death Act, are based on provisions of the California Health and Safety Code, this paragraph, dealing with irreversible coma, is not based on any California statute or court decision, but rather reflects our view of good medical practice and the current standard of medical care in Los Angeles County.

New Jersey Guidelines for Health Care Facilities to Implement Procedures Concerning the Care of Comatose Non-Cognitive Patients*

In order to assist and guide the medical profession and the governing authorities of health care facilities¹ in the implementation of the procedures required by the New Jersey Supreme Court for cases similar to that of Karen Ann Quinlan, the formation and operation of the requisite Prognosis Committee is described herein. The term, Prognosis Committee, recognizes the Court's view that "the focal point of decision should be the prognosis as to the reasonable possibility of return to cognitive and sapient life."

The basic decision-making procedure, as paraphrased from the Court's conclusions, would be as follows:

Upon the concurrence of the family, and in cases where required by law, the guardian of the patient, should the responsible attending physicians conclude that there is no reasonable possibility of the patient's ever emerging from a comatose condition to a cognitive, sapient state and that the life-support apparatus being administered to the patient should be discontinued, they shall consult with the Prognosis Committee (or like body) serving the institution in which the patient is confined.

If that consultative body agrees that there is no reasonable possibility of the patient's ever emerging from a comatose condition to a cognitive, sapient state, the life-support system may be withdrawn and said action shall

* The Medical Society of New Jersey, the Association of Osteopathic Physicians and Surgeons, and the New Jersey Hospital Association (Jan. 26, 1977). Available from the New Jersey Dept. of Health, P.O. Box 1540. Trenton. N.J. 08625.

¹ In this context, "health care facility" means an institution or facility as defined in the Health Care Facilities Planning Act (N.J.S.A. 26:2H-2a).

"The term guardian as here used refers to the "guardian of the person of the incompetent." This individual may be designated by a Court to make decisions for the incompetent concerning the incompetent's physical state and bodily integrity, such as the acceptance or refusal of various types of treatment. Such guardians are bound by traditional fiduciary duties, and must act in the perceived best interests of the incompetent.

This form of guardianship is contrasted with the "guardian of the property of the incompetent" who may be designated by a court to make decisions for the incompetent concerning dispositions of the incompetent's reality and personality. Such guardians have no control over the disposition of the incompetent's body, i.e., person, and are not involved in any decisions concerning the incompetent's medical treatment.

be without any civil or criminal liability therefor on the part of any participant, whether guardian, physician, hospital or others.

A Prognosis Committee, which will facilitate the decision-making process outlined by the Court, should be established or arranged for by those health care facilities which receive inpatients who are or may become comatose and non-cognitive. The Committee should function in the manner indicated by the following guidelines.

A. Responsibility for Forming the Prognosis Committee

The Board of Trustees, or responsible governing authority of the facility, shall have the responsibility to select those physicians who will form the Prognosis Committee. The physicians shall be designated to serve for a specified term and one of these physicians shall be selected by the governing authority to chair the Prognosis Committee.

B. Composition of the Prognosis Committee

1. A standard complement of medical disciplines shall be represented on the Prognosis Committee. These disciplines will be: General Surgery; Medicine; Neurosurgery or Neurology; Anesthesiology; and Pediatrics (if so indicated by the type of patient). At least two (2) additional physicians from any appropriate disciplines shall be selected from outside the staff of the facility to serve on the Prognosis Committee.

2. It is highly desirable that the physicians serving on the Prognosis Committee be Board Certified in their respective specialties.

3. At the time that the Prognosis Committee is required to consider a case, the family, guardian or attending physician can request that the Prognosis Committee consult with a specific physician named by any of them. The medical specialty of such physician should be predicated upon the particular characteristics of the patient's case. The Prognosis Committee shall accede to this request. The family may also designate a physician, other than the attending physician, to be present throughout the Committee's proceedings.

4. Under no circumstances should any of the physicians serving on the Prognosis Committee have been the attending or treating physician on the case under consideration.

NOTE: In order to proceed with the establishment of the requisite Prognosis Committees some facilities, because of staff limitations, may need assistance in this effort or may desire to act cooperatively with neighboring institutions. For example, the regionalizing (or sharing) of a Prognosis Committee to serve several health care facilities is recommended as a practical approach. It is suggested, therefore, that health care facilities seek assistance in developing and coordinating such arrangements from the New Jersey Hospital Association as

well as the professional medical organizations (The Medical Society of New Jersey, and the New Jersey Association of Osteopathic Physicians and Surgeons).

C. Activation of the Prognosis Committee

1. The patient's family or guardian, or the attending physician acting on behalf of the family may, in writing, request the health care facility's chief executive officer (administrator) to activate the Prognosis Committee to begin its work on a case. In the event that this request is made by the guardian of the patient, such individual shall present legal documentation so designating his status to the chief executive officer of the health care facility. The administrator has the responsibility to ensure that all of the required physician selections are made and to notify the Chairman of the Board of Trustees, or other responsible governing authority, as to the status of the Committee's composition.

2. The administrator shall advise the designated Chairman of the Prognosis Committee to have the group proceed promptly and with due diligence to come to a conclusion either supporting (concurring) or rejecting the prognosis of the attending physician.

3. The administrator shall also make readily available to the family the counselling and support services of the health care facility, or of the surrounding community.

D. Prognosis Committee Functions and Reporting Requirements

1. The Committee shall review all relevant patient records, with the family's consent, and shall seek additional medical information concerning the patient from those nursing personnel and other professionals it deems appropriate to the case under consideration. The Committee shall also determine which member or members will conduct a complete examination of the patient.

2. During the course of its deliberations, the Committee should arrive at a clear consensus with respect to the prognosis of the patient although the Supreme Court's decision does not expressly require unanimity. It is recognized that professional standards dictate caution in the determination of the prognosis.

3. The Chairman of the Prognosis Committee shall summarize and report the Committee's conclusion, in writing, to the chairman of the hospital's Board of Trustees, or other responsible governing authority, the attending physician, the administrator of the hospital, the patient's family, and when appropriate, the patient's guardian. The report shall consist of the Committee's findings concerning the prognosis of the patient, supplemented by a summary of the information considered including professional consultations, if any, and the reasons supporting their conclusion. The report shall identify each of

the participating members of the Committee and their respective specialties and which member or members performed the complete examination of the patient. Finally, the Committee shall make a specific written finding in the report as to whether there is no reasonable possibility of the patient's ever emerging from a comatose condition to a cognitive, sapient state. The report shall be retained and preserved by the health care facility as part of the medical record of the patient.

E. The Continuing Responsibility of the Attending Physician

It should be recognized from the foregoing that the function and responsibility of the Prognosis Committee is limited to the application of specialized medical knowledge to a particular case in order to arrive at a determination of concurrence or non-concurrence with the prognosis of the attending physician. Once that determination has been made and reported, the Committee has thereby discharged its responsibility. The attending physician, guided by the Committee's decision and with the concurrence of the family, may then proceed with the appropriate course of action and, if indicated, shall personally withdraw life-support systems.