

House Bill 205

By: Representatives Lindsey of the 54th, Gardner of the 57th, Willard of the 51st, Neal of the 2nd, Weldon of the 3rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so
2 as to provide for a psychiatric advance directive; to provide for a competent adult to express
3 his or her mental health care treatment preferences and desires directly through instructions
4 written in advance and indirectly through appointing an agent to make mental health care
5 decisions on behalf of that person; to provide a short title; to provide for a purpose statement;
6 to provide for definitions; to provide for the scope, use, and authority of a psychiatric
7 advance directive; to provide for the appointment, powers, duties, and access to information
8 of a mental health agent; to provide for limitations on serving as a mental health agent and
9 an agent's ability to withdraw as agent; to provide for revocation of a psychiatric advance
10 directive; to provide for the use and effectiveness of a psychiatric advance directive; to
11 provide for the responsibilities and duties of physicians and other providers using a
12 psychiatric advance directive; to provide for civil and criminal immunity under certain
13 circumstances; to provide a statutory psychiatric advance directive form; to provide for
14 construction of such form; to amend Code Section 16-5-5 and Title 31 of the Official Code
15 of Georgia Annotated, relating to assisted suicide and health, respectively, so as to include
16 cross-references to the psychiatric advance directive and provide for consistent terminology;
17 to provide for related matters; to repeal conflicting laws; and for other purposes.

18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

19 **PART I**
20 **PSYCHIATRIC ADVANCE DIRECTIVE**
21 **SECTION 1-1.**

22 This Act shall be known and may be cited as the "Psychiatric Advance Directive Act."

23 **SECTION 1-2.**

24 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by
25 adding a new chapter to read as follows:

26 "CHAPTER 11

27 37-11-1.

28 This chapter is enacted in recognition of the fundamental right of an individual to have
29 power over decisions relating to his or her mental health care as a matter of public policy.

30 37-11-2.

31 As used in this chapter, the term:

32 (1) 'Capable' means a declarant is not incapable of making mental health care decisions.

33 (2) 'Competent adult' means a person of sound mind who is 18 years of age or older or
34 is an emancipated minor.

35 (3) 'Declarant' means the person who has executed a psychiatric advance directive
36 authorized by this chapter.

37 (4) 'Facility' means a hospital, skilled nursing facility, hospice, institution, home,
38 residential or nursing facility, treatment facility, and any other facility or service which
39 has a valid permit or provisional permit issued under Chapter 7 of this title or which is
40 licensed, accredited, or approved under the laws of any state, and includes hospitals
41 operated by the United States government or by any state or subdivision thereof.

42 (5) 'Incapable of making mental health care decisions' means that, in the opinion of a
43 physician or licensed psychologist who has personally examined a declarant, or in the
44 opinion of a court, a declarant lacks the capacity to understand the risks and benefits of,
45 and the alternatives to, a mental health care decision under consideration and is unable
46 to give or communicate rational reasons for mental health care decisions because of
47 impaired thinking, impaired ability to receive and evaluate information, or other cognitive
48 disability.

49 (6) 'Mental health agent' or 'agent' means a person appointed by a declarant to act for and
50 on behalf of such declarant to make decisions related to mental health care when such
51 declarant is incapable of making mental health care decisions. Such term shall include
52 any alternate mental health agent appointed by a declarant.

53 (7) 'Mental health care' means any care, treatment, service, or procedure to maintain,
54 diagnose, treat, or provide for a declarant's mental health.

55 (8) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter
56 34 of Title 43 and, if the declarant is receiving mental health care in another state, a
57 person lawfully licensed in such state.

58 (9) 'Provider' means any person administering mental health care who is licensed,
59 certified, or otherwise authorized or permitted by law to administer mental health care in
60 the ordinary course of business or the practice of a profession, including, but not limited
61 to, professional counselors, psychologists, clinical social workers, and clinical nurse
62 specialists in psychiatric and mental health; a physician; or any person acting for any such
63 authorized person.

64 (10) 'Psychiatric advance directive' or 'directive' means a written document voluntarily
65 executed by a person in accordance with the requirements of Code Section 37-11-8.

66 37-11-3.

67 (a) A competent adult may execute a psychiatric advance directive containing mental
68 health care preferences, information, or instructions regarding his or her mental health care
69 that authorizes and consents to a provider or facility acting in accordance with such
70 directive. A directive may include consent to or refusal of specified mental health care.

71 (b) A psychiatric advance directive may include, but shall not be limited to:

72 (1) The names and telephone numbers of individuals to contact in the event a declarant
73 has a mental health crisis;

74 (2) Situations that have been known to cause a declarant to experience a mental health
75 crisis;

76 (3) Responses that have been known to de-escalate a declarant's mental health crisis;

77 (4) Responses that may assist a declarant to remain in such declarant's home during a
78 mental health crisis;

79 (5) The types of assistance that may help stabilize a declarant if it becomes necessary to
80 enter a facility; and

81 (6) Medications a declarant is taking or has taken in the past and the effects of such
82 medications.

83 (c) A psychiatric advance directive may include a mental health agent.

84 (d) If a declarant chooses not to appoint an agent, the instructions and desires of a
85 declarant as set forth in the directive shall be followed to the fullest extent possible by
86 every provider or facility to whom the directive is communicated, subject to the right of the
87 provider or facility to refuse to comply with the directive as set forth in Code Section
88 37-11-11.

89 (e) A person shall not be required to execute or refrain from executing a directive as a
90 criterion for insurance, as a condition for receiving mental health care or physical health
91 care services, or as a condition of discharge from a facility.

92 (f) Unless a declarant indicates otherwise, a psychiatric advance directive shall take
93 precedence over any advance directive for health care pursuant to Chapter 32 of Title 31,

94 durable power of attorney for health care creating a health care agency under the former
 95 Chapter 36 of Title 31, as such chapter existed on and before June 30, 2007, health care
 96 proxy, or living will that a declarant executed prior to executing a psychiatric advance
 97 directive to the extent that such other documents relate to mental health care and are
 98 inconsistent with the psychiatric advance directive.

99 (g) No provision of this chapter shall be construed to bar use by a declarant of an advance
 100 directive for health care under Chapter 32 of Title 31.

101 37-11-4.

102 (a) A declarant may designate a competent adult to act as his or her agent to make
 103 decisions about his or her mental health care. An alternative agent may also be designated.

104 (b) An agent shall have no authority to make mental health care decisions when a declarant
 105 is capable.

106 (c) The authority of an agent shall continue in effect so long as the directive appointing
 107 such agent is in effect or until such agent has withdrawn.

108 (d) An agent appointed by a declarant:

109 (1) Shall be authorized to make any and all mental health care decisions on behalf of
 110 such declarant which such declarant could make if such declarant were capable;

111 (2) Shall exercise granted powers in a manner consistent with the intent and desires of
 112 such declarant. If such declarant's intentions and desires are not expressed or are unclear,
 113 the agent shall act in such declarant's best interests, considering the benefits, burdens, and
 114 risks of such declarant's circumstances and mental health care options;

115 (3) Shall not be under any duty to exercise granted powers or to assume control of or
 116 responsibility for such declarant's mental health care; but, when granted powers are
 117 exercised, the agent shall be required to use due care to act for the benefit of such
 118 declarant in accordance with the terms of the psychiatric advance directive;

119 (4) Shall not make a mental health care decision different from or contrary to such
 120 declarant's instruction if such declarant is capable at the time of the request for consent
 121 or refusal of mental health care;

122 (5)(A) May make a mental health care decision different from or contrary to such
 123 declarant's instruction in such declarant's psychiatric advance directive if:

124 (i) Such declarant's provider or facility determines in good faith at the time of consent
 125 or refusal of mental health care that the mental health care requested or refused in the
 126 directive's instructions is:

127 (I) Unavailable;

128 (II) Medically contraindicated in a manner that would result in substantial harm to
 129 such declarant if administered; or

130 (III) In the opinion of the provider or facility, inconsistent with reasonable medical
131 standards to benefit such declarant or has proven ineffective in treating such
132 declarant's mental health condition; and

133 (ii) The mental health care requested or refused in the directive's instructions is
134 unlikely to be delivered by another provider or facility in the community under the
135 circumstances.

136 (B) In the event the agent exercises authority under one of the circumstances set forth
137 in subparagraph (A) of this paragraph, the agent shall exercise the authority in a manner
138 consistent with the intent and desires of such declarant. If such declarant's intentions
139 and desires are not expressed or are unclear, the agent shall act in such declarant's best
140 interests, considering the benefits, burdens, and risks of such declarant's circumstances
141 and mental health care options;

142 (6) Shall not delegate authority to make mental health care decisions; and

143 (7) Has the following general powers, unless expressly limited in the psychiatric advance
144 directive:

145 (A) To sign and deliver all instruments, negotiate and enter into all agreements, and do
146 all other acts reasonably necessary to exercise the powers granted to the agent;

147 (B) To consent to, authorize, refuse, or withdraw consent to any providers and any type
148 of mental health care of such declarant, including any medication program;

149 (C) To admit such declarant to, or discharge him or her from, any facility; and

150 (D) To contract for mental health care and facilities in the name of and on behalf of
151 such declarant, and the agent shall not be personally financially liable for any services
152 or mental health care contracted for on behalf of such declarant.

153 (e) A court may remove a mental health agent if it finds that an agent is not acting in
154 accordance with the declarant's treatment instructions as expressed in his or her directive.

155 37-11-5.

156 (a) Except to the extent that a right is limited by a directive or by any state or federal law
157 or regulation, an agent shall have the same right as a declarant to receive information
158 regarding the proposed mental health care and to receive, review, and consent to disclosure
159 of medical records, including records relating to the treatment of a substance use disorder,
160 relating to that mental health care. All of a declarant's mental health information and
161 medical records shall remain otherwise protected under state and federal privilege, and this
162 right of access shall not waive any evidentiary privilege.

163 (b) At the declarant's expense and subject to reasonable rules of a provider or facility to
164 prevent disruption of the declarant's mental health care, an agent shall have the same right
165 the declarant has to examine, copy, and consent to disclosure of all the declarant's medical

166 records that the agent deems relevant to the exercise of the agent's powers, whether the
 167 records relate to mental health or any other medical condition and whether they are in the
 168 possession of or maintained by any physician, psychiatrist, psychologist, therapist, facility,
 169 or other health care provider, despite contrary provisions of any other statute or rule of law.
 170 (c) The authority given an agent by this Code section shall include all rights that a
 171 declarant has under the federal Health Insurance Portability and Accountability Act of
 172 1996, P.L. 104-191, and its implementing regulations regarding the use and disclosure of
 173 individually identifiable health information and other medical records.

174 37-11-6.

175 The following persons shall not serve as a declarant's agent:

176 (1) Such declarant's provider or an employee of that provider unless such employee is
 177 a family member, friend, or associate of such declarant and is not directly involved in
 178 such declarant's mental health care; or

179 (2) An employee of the Department of Behavioral Health and Developmental Disabilities
 180 or of a local public mental health agency or of any organization that contracts with a local
 181 public mental health authority unless such employee is a family member, friend, or
 182 associate of such declarant and is not directly involved in such declarant's mental health
 183 care.

184 37-11-7.

185 An agent may withdraw by giving written notice to a declarant. If such declarant is
 186 incapable of making mental health care decisions, such agent may withdraw by giving
 187 written notice to the provider or facility that is providing mental health care to the declarant
 188 at the time of the agent's withdrawal. Any provider or facility that receives an agent's
 189 withdrawal shall document the withdrawal as part of such declarant's medical record.

190 37-11-8.

191 (a) A psychiatric advance directive shall be effective only if it is signed by the declarant
 192 and witnessed by two competent adults, but such witnesses shall not be required to be
 193 together or present when such declarant signs the directive. The witnesses shall attest that
 194 the declarant is known to them, appears to be of sound mind, is not under duress, fraud, or
 195 undue influence, and signed his or her directive in the witness's presence or acknowledges
 196 signing his or her directive. For purposes of this subsection, the term 'of sound mind'
 197 means having a decided and rational desire to create a psychiatric advance directive.

198 (b) A validly executed psychiatric advance directive shall become effective upon its proper
 199 execution and shall remain in effect until revoked by the declarant.

200 (c) The following persons shall not serve as witnesses to the signing of a directive:

201 (1) A provider who is providing mental health care to the declarant at the time such
202 directive is being executed or an employee of such provider unless such employee is a
203 family member, friend, or associate of such declarant and is not directly involved in the
204 declarant's mental health care;

205 (2) An employee of the Department of Behavioral Health and Developmental Disabilities
206 or of a local public mental health agency or of any organization that contracts with a local
207 public mental health authority unless such person is a family member, friend, or associate
208 of such declarant and is not directly involved in the declarant's mental health care; or

209 (3) A person selected to serve as the declarant's mental health agent.

210 (d) A person who witnesses a psychiatric advance directive in good faith and in
211 accordance with this chapter shall not be civilly liable or criminally prosecuted for actions
212 taken by an agent.

213 (e) A copy of a directive executed in accordance with this Code section shall be valid and
214 have the same meaning and effect as the original document.

215 37-11-9.

216 A directive may be revoked in whole or in part by a declarant at any time so long as such
217 declarant is capable. A provider or facility that receives a revocation shall document the
218 revocation of a directive as part of a declarant's medical record.

219 37-11-10.

220 (a) Upon being presented with a psychiatric advance directive, a provider or facility shall
221 make the directive a part of a declarant's medical record. Any revocation of the directive
222 communicated to a provider or facility by a capable declarant shall also be documented in
223 such declarant's medical record.

224 (b) In the absence of specific knowledge of the revocation or invalidity of a directive, a
225 provider or facility providing mental health care to a declarant may presume that a person
226 who executed a psychiatric advance directive in accordance with this chapter was of sound
227 mind and acted voluntarily when executing such directive and may rely upon a psychiatric
228 advance directive or a copy of that directive.

229 (c) A provider or facility shall be authorized to act in accordance with a directive when a
230 declarant is incapable of making mental health care decisions.

231 (d) A provider or facility shall continue to obtain a declarant's consent to all mental health
232 care decisions if he or she is capable of providing consent or refusal.

233 37-11-11.

234 (a)(1) When acting under the authority of a directive, a provider or facility shall comply
235 with it to the fullest extent possible unless the requested mental health care is:

236 (A) Unavailable;

237 (B) Medically contraindicated in a manner that would result in substantial harm to the
238 declarant if administered; or

239 (C) In the opinion of the provider or facility, inconsistent with reasonable medical
240 standards to benefit the declarant or has proven ineffective in treating such declarant's
241 mental health condition.

242 (2) In the event that a part of a directive is unable to be followed due to any of the
243 circumstances set forth in paragraph (1) of this subsection, all other parts of such
244 directive shall be followed.

245 (b) If a provider or facility is unwilling at any time for one or more of the reasons set forth
246 in paragraph (1) of subsection (a) of this Code section to comply with a declarant's wishes
247 as set forth in the directive or with the decision of such declarant's agent, such provider or
248 facility shall:

249 (1) Document the reason for not following the directive in such declarant's medical
250 record; and

251 (2) Promptly notify such declarant and his or her agent, if one is appointed in the
252 directive, or otherwise such declarant's next of kin or legal guardian, of the refusal to
253 follow the directive or instructions of the agent and document the notification in such
254 declarant's medical record.

255 (c) In the event a provider or facility is unwilling at any time for one or more of the
256 reasons set forth in paragraph (1) of subsection (a) of this Code section to comply with a
257 declarant's wishes as set forth in the directive or with the decision of such declarant's agent,
258 if an agent has been appointed, the agent, and otherwise the next of kin or legal guardian
259 of such declarant, shall arrange for such declarant's transfer to another provider or facility
260 if the requested care would be delivered by that other provider or facility.

261 (d) A provider or facility unwilling at any time for one or more of the reasons set forth in
262 paragraph (1) of subsection (a) of this Code section to comply with a declarant's wishes as
263 set forth in the directive or with the decision of a declarant's mental health agent shall
264 continue to provide reasonably necessary consultation and care in connection with the
265 pending transfer.

266 (e) A psychiatric advance directive shall not limit or otherwise apply to the involuntary
267 examination, treatment, or hospitalization of patients under Chapter 3 of this title.

268 (f) Nothing in this chapter shall be construed to require a provider or facility to provide
269 mental health care for which a declarant or a third-party payor is unable or refuses to
270 ensure payment.

271 37-11-12.

272 (a) Each provider, facility, or any other person who acts in good faith reliance on any
273 instructions contained in a directive or on any direction or decision by a mental health
274 agent shall be protected and released to the same extent as though such person had
275 interacted directly with a capable declarant.

276 (b) Without limiting the generality of the provisions of subsection (a) of this Code section,
277 the following specific provisions shall also govern, protect, and validate the acts of a
278 mental health agent and each such provider, facility, and any other person acting in good
279 faith reliance on such instruction, direction, or decision:

280 (1) No provider, facility, or person shall be subject to civil liability, criminal prosecution,
281 or discipline for unprofessional conduct solely for complying with any instructions
282 contained in a directive or with any direction or decision by a mental health agent, even
283 if death or injury to the declarant ensues;

284 (2) No provider, facility, or person shall be subject to civil liability, criminal prosecution,
285 or discipline for unprofessional conduct solely for failure to comply with any instructions
286 contained in a directive or with any direction or decision by a mental health agent, so
287 long as such provider, facility, or person informs such agent of its refusal or failure to
288 comply with the directive and continues to provide reasonably necessary consultation and
289 care in connection with a pending transfer;

290 (3) If the actions of a provider, facility, or person who fails to comply with any
291 instruction contained in a directive or with any direction or decision by a mental health
292 agent are substantially in accord with reasonable medical standards at the time of consent
293 or refusal of mental health care and such provider, facility, or person cooperates in the
294 transfer of the declarant pursuant to subsection (d) of Code Section 37-11-11, such
295 provider, facility, or person shall not be subject to civil liability, criminal prosecution, or
296 discipline for unprofessional conduct for failure to comply with the psychiatric advance
297 directive;

298 (4) No mental health agent who, in good faith, acts with due care for the benefit of the
299 declarant and in accordance with the terms of a directive, or who fails to act, shall be
300 subject to civil liability or criminal prosecution for such action or inaction;

301 (5) If the authority granted by a psychiatric advance directive is revoked under
302 Code Section 37-11-9, a provider, facility, or agent shall not be subject to criminal
303 prosecution or civil liability for acting in good faith reliance upon such psychiatric

304 advance directive unless such provider, facility, or agent had actual knowledge of the
 305 revocation; and
 306 (6) In the event a declarant has appointed a health care agent in accordance with Chapter
 307 32 of Title 31, no provider, facility, or person who relies in good faith on the direction of
 308 such health care agent shall be subject to civil liability, criminal prosecution, or discipline
 309 for unprofessional conduct for complying with any direction or decision of such health
 310 care agent in the event the declarant's condition is subsequently determined to be a mental
 311 health care condition.

312 37-11-13.

313 A law enforcement officer who uses a declarant's valid psychiatric advance directive and
 314 acts in good faith reliance on the instructions contained in such directive shall not be
 315 subject to criminal prosecution or civil liability for any harm to such declarant that results
 316 from a good faith effort to follow such directive's instructions.

317 37-11-14.

318 (a) The provisions of this chapter shall not apply to or invalidate a valid psychiatric
 319 advance directive executed prior to July 1, 2013.

320 (b) The use of the form set forth in Code Section 37-11-15 or a similar form after July 1,
 321 2013, in the creation of a psychiatric advance directive shall be deemed lawful and, when
 322 such form is used and it meets the requirements of this chapter, it shall be construed in
 323 accordance with the provisions of this chapter.

324 (c) Any person may use another form for a psychiatric advance directive so long as the
 325 form is substantially similar to, otherwise complies with the provisions of this chapter, and
 326 provides notice to a declarant substantially similar to that contained in the form set forth
 327 in Code Section 37-11-15. As used in this subsection, the term 'substantially similar' may
 328 include forms from other states.

329 37-11-15.

330 **'GEORGIA PSYCHIATRIC ADVANCE DIRECTIVE**

331 By: _____ Date of Birth: _____
 332 (Print Name) (Month/Day/Year)

333 *As used in this psychiatric advance directive, the term:*

334 (1) "Facility" means a hospital, skilled nursing facility, hospice, institution, home,
 335 residential or nursing facility, treatment facility, and any other facility or service which

336 has a valid permit or provisional permit issued under Chapter 7 of Title 37 of the Official
 337 Code of Georgia Annotated or which is licensed, accredited, or approved under the laws
 338 of any state, and includes hospitals operated by the United States government or by any
 339 state or subdivision thereof.

340 (2) "Provider" means any person administering mental health care who is licensed,
 341 certified, or otherwise authorized or permitted by law to administer mental health care
 342 in the ordinary course of business or the practice of a profession, including, but not
 343 limited to, professional counselors, psychologists, clinical social workers, and clinical
 344 nurse specialists in psychiatric and mental health; a physician; or any person acting for
 345 any such authorized person.

346 This psychiatric advance directive has four parts:

347 PART ONE STATEMENT OF INTENT AND TREATMENT PREFERENCES.

348 This part allows you to state your intention for this document and state
 349 your treatment preferences and consent if you have been determined
 350 to be incapable of making informed decisions about your mental health
 351 care. PART ONE will become effective only if you have been
 352 determined in the opinion of a physician or licensed psychologist who
 353 has personally examined you, or in the opinion of a court, to lack the
 354 capacity to understand the risks and benefits of, and the alternatives
 355 to, a mental health care decision under consideration and you are
 356 unable to give or communicate rational reasons for mental health care
 357 decisions because of impaired thinking, impaired ability to receive and
 358 evaluate information, or other cognitive disability. Reasonable and
 359 appropriate efforts will be made to communicate with you about your
 360 treatment preferences before PART ONE becomes effective. You
 361 should talk to your family and others close to you about your intentions
and treatment preferences.

362 PART TWO MENTAL HEALTH AGENT. This part allows you to choose
 363 someone to make mental health care decisions for you when you
 364 cannot make mental health care decisions for yourself. The person you
 365 choose is called a mental health agent. You should talk to your mental
 366 health agent about this important role.

367 PART THREE OTHER RELATED ISSUES. This part allows you to give important
 368 information to people who may be involved with you during a mental
 369 health care crisis.

370 PART FOUR EFFECTIVENESS AND SIGNATURES. This part requires your
 371 signature and the signatures of two witnesses. You must complete
 372 PART FOUR if you have filled out any other part of this form.

373 You may fill out any or all of the first three parts listed above. You must fill out PART
 374 FOUR of this form in order for this form to be effective.

375 You should give a copy of this completed form to people who might need it, such as your
 376 mental health agent, your family, and your physician. Keep a copy of this completed form
 377 at home in a place where it can easily be found if it is needed. Review this completed form
 378 periodically to make sure it still reflects your preferences. If your preferences change,
 379 complete a new psychiatric advance directive.

380 Using this form of psychiatric advance directive is completely optional. Other forms of
 381 psychiatric advance directives may be used in Georgia.

382 You may revoke this completed form at any time that you are capable of making informed
 383 decisions about your mental health care. If you choose to revoke this form, you should
 384 communicate your revocation to your providers, your agents, and any other person to
 385 whom you have given a copy of this form. This completed form will replace any advance
 386 directive for health care, durable power of attorney for health care, health care proxy, or
 387 living will that you have completed before completing this form to the extent that such other
 388 documents relate to mental health care and are inconsistent with the information contained
 389 in this form.

390
391

<p style="text-align: center;"><u>PART ONE: STATEMENT OF INTENT</u> <u>AND TREATMENT PREFERENCES</u></p>
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392 [PART ONE will become effective only if you have been determined in the opinion of a
 393 physician or licensed psychologist who has personally examined you, or in the opinion of
 394 a court, to lack the capacity to understand the risks and benefits of, and the alternatives to,
 395 a mental health care decision under consideration and you are unable to give or
 396 communicate rational reasons for mental health care decisions because of impaired

397 thinking, impaired ability to receive and evaluate information, or other cognitive disability.
 398 Reasonable and appropriate efforts will be made to communicate with you about your
 399 treatment preferences before PART ONE becomes effective. PART ONE will be effective
 400 even if PARTS TWO or THREE are not completed. If you have not selected a mental
 401 health agent in PART TWO, or if your mental health agent is not available, then PART
 402 ONE will communicate your treatment preferences to your providers or a facility providing
 403 care to you. If you have selected a mental health agent in PART TWO, then your mental
 404 health agent will have the authority to make health care decisions for you regarding
 405 matters guided by your treatment preferences and other factors described in this PART.]

406 **(1) STATEMENT OF INTENT**

407 I, (your name) _____, being of sound mind, willfully and
 408 voluntarily make this psychiatric advance directive as a means of expressing in advance
 409 my informed choices and consent regarding my mental health care in the event I become
 410 incapable of making informed decisions on my own behalf. I understand this document
 411 becomes effective if it is determined by a physician or licensed psychologist who has
 412 personally examined me, or in the opinion of a court, that I lack the capacity to
 413 understand the risks, benefits, and alternatives to a mental health care treatment decision
 414 under consideration and I am unable to give or communicate rational reasons for my
 415 mental health care treatment decisions because of impaired thinking, impaired ability to
 416 receive and evaluate information, or other cognitive disability.

417 If I am deemed incapable of making mental health care decisions, I intend for this
 418 document to constitute my advance authorization and consent, based on my past
 419 experiences with my illness and knowledge gained from those experiences, for treatment
 420 that is medically indicated and consistent with the preferences I have expressed in this
 421 document.

422 I understand this document continues in operation only during my incapacity to make
 423 mental health care decisions. I understand I may revoke this document only during
 424 periods when I am mentally capable.

425 I intend for this psychiatric advance directive to take precedence over any advance
 426 directive for health care pursuant to Chapter 32 of Title 31 of the Official Code of
 427 Georgia Annotated, durable power of attorney for health care creating a health care
 428 agency under the former Chapter 36 of Title 31 of the Official Code of Georgia
 429 Annotated, as such chapter existed on and before June 30, 2007, health care proxy, or

430 living will that I have executed prior to executing this form to the extent that such other
431 documents relate to mental health care and are inconsistent with this executed document.

432 In the event that a decision maker is appointed by a court to make mental health care
433 decisions for me, I intend this document to take precedence over all other means of
434 determining my intent while I was competent.

435 It is my intent that a person or facility involved in my care shall not be civilly liable or
436 criminally prosecuted for honoring my wishes as expressed in this document or for
437 following the directions of my agent.

438 **(2) INFORMATION REGARDING MY SYMPTOMS**

439 The following are symptoms or behaviors I typically exhibit when escalating towards a
440 mental health crisis. If I exhibit any of these symptoms or behaviors, an evaluation is
441 needed regarding whether or not I am incapable of making mental health care decisions:

442 _____
443 _____
444 _____

445 The following may cause me to experience a mental health crisis or to make my
446 symptoms worse:

447 _____
448 _____
449 _____

450 The following techniques may be helpful in de-escalating my crisis:

451 _____
452 _____
453 _____

454 When I exhibit the following behaviors, I would like to be evaluated to determine
455 whether or not I have regained the capacity to make my mental health care decisions:

456 _____
457 _____
458 _____

459 **(3) PREFERRED CLINICIANS**

460 The names of my doctors, therapists, pharmacists, and other mental health professionals
461 and their telephone numbers are:

462 Name and telephone numbers:

463 _____
464 _____
465 _____

466 I prefer and consent to treatment from the following clinicians:

467 Names:

468 _____
469 _____
470 _____

471 I refuse to be treated by the following clinicians:

472 Names:

473 _____
474 _____
475 _____

476 **(4) TREATMENT INSTRUCTIONS**

477 **Medications**

478 I am currently using and consent to continue to use the following medications (include
479 all medications, whether for mental health care treatment or general health care
480 treatment):

481 _____
482 _____
483 _____

484 If additional medications become necessary, I prefer and consent to take the following
485 medications:

486 _____
487 _____
488 _____

489 I cannot tolerate the following medications because:

490 _____
491 _____
492 _____

493 I am allergic to the following medications:

494 _____
495 _____
496 _____

497 If my preferred medications cannot be given and I have not appointed an agent in PART
 498 TWO to make an alternative decision for me, I want my treating physician to choose an
 499 alternative medication that would best meet my mental health needs, subject to any
 500 limitations I have expressed in my treating instructions above. (Check "yes" if you agree
 501 with this statement and "no" if you disagree with this statement.) Yes _____ No _____

502 In the event I need to have medication administered, I would prefer and consent to the
 503 following methods (Check "yes" or "no" and list a reason for your request if you have
 504 one.):

505 Medication in pill form: _____ Yes _____ No _____

506 Reason: _____

507 Liquid medication: _____ Yes _____ No _____

508 Reason: _____

509 Medication by injection: _____ Yes _____ No _____

510 Reason: _____

511 Covert medication

512 (without my knowledge in drink or food): _____ Yes _____ No _____

513 Reason: _____

514 **Hospitalization is Not My First Choice**

515 It is my intention, if possible, to stay at home or in the community with the following
 516 supports:

517 _____
 518 _____
 519 _____

520 If I need outpatient therapy, I prefer and consent to it being provided by:

521 _____
 522 _____
 523 _____

524 Additional instructions that may help me avoid a hospitalization:

525 _____
 526 _____
 527 _____

528 **Treatment Facilities**

529 If it becomes necessary for me to be hospitalized, I would prefer and consent to being
 530 treated at the following facilities:

531 _____
 532 _____
 533 _____

534 I do not want to be treated at the following facilities:

535 _____
 536 _____
 537 _____

538 I refuse to be treated at the following facilities:

539 _____
 540 _____
 541 _____

542 Reason(s) for wishing to avoid the above facilities:

543 _____
 544 _____
 545 _____

546 I generally react to being hospitalized as follows:

547 _____
 548 _____
 549 _____

550 Staff at a facility can help me by doing the following:

551 _____
 552 _____
 553 _____

554 I give permission for the following people to visit me:

555 _____
 556 _____
 557 _____

558 **Additional Interventions** *(Please place your initials in the blanks)*

559 I prefer the following interventions as indicated by my initials and consent to any
 560 intervention where I have initialed next to "yes."

561 Seclusion: _____ Yes _____ No _____

562 Reason: _____

563 Physical restraints: _____ Yes _____ No _____

564 Reason: _____

565 Experimental treatment: _____ Yes _____ No _____

566 Reason: _____

567 Electroconvulsive therapy (ECT): Yes No

568 Reason:

569 Any limitations on consent to the administration of electroconvulsive therapy:

570 _____

571 _____

572 _____

573 Other instructions as to my preferred interventions:

574 _____

575 _____

576 _____

577 **(5) ADDITIONAL STATEMENTS**

578 [This section is optional. This PART will be effective even if this section is left blank.

579 This section allows you to state additional treatment preferences, to provide additional

580 guidance to your mental health agent (if you have selected a mental health agent in PART

581 TWO), or to provide information about your personal and religious values about your

582 medical treatment. Understanding that you cannot foresee everything that could happen

583 to you, you may want to provide guidance to your mental health agent (if you have

584 selected a mental health agent in PART TWO) about following your treatment

585 preferences.]

586 _____

587 _____

588 _____

589

PART TWO: MENTAL HEALTH AGENT

590 [PART ONE will be effective even if PART TWO is not completed. If you do not wish to

591 appoint an agent, do not complete PART TWO. A provider who is directly involved in

592 your health care or any employee of that provider may not serve as your mental health

593 agent unless such employee is your family member, friend, or associate and is not directly

594 involved in your health care. An employee of the Department of Behavioral Health and

595 Developmental Disabilities or of a local public mental health agency or of any

596 organization that contracts with a local public mental health authority may not serve as

597 your mental health agent unless such person is your family member, friend, or associate

598 and is not directly involved in your health care. If you are married, a future divorce or

599 annulment of your marriage will revoke the selection of your current spouse as your

600 mental health agent unless you indicate otherwise in Section (10) of this PART. If you

601 are not married, a future marriage will revoke the selection of your mental health agent
602 unless the person you selected as your mental health agent is your new spouse.]

603 **(6) MENTAL HEALTH AGENT**

604 I select the following person as my mental health agent to make health care decisions for
605 me:

606 Name: _____

607 Address: _____

608 Telephone Numbers: _____

609 (Home, Work, and Mobile)

610 Agent's Acceptance: I have read this form, and I certify that I do not, have not, and will
611 not provide mental health care and treatment for: (your name) _____

612 I accept the designation as agent for: (your name) _____

613 (Agent's signature and date) _____

614 **(7) BACK-UP MENTAL HEALTH AGENT**

615 [This section is optional. PART TWO will be effective even if this section is left blank.]

616 If my mental health agent cannot be contacted in a reasonable time period and cannot be
617 located with reasonable efforts or for any reason my mental health agent is unavailable
618 or unable or unwilling to act as my mental health agent, then I select the following, each
619 to act successively in the order named, as my back-up mental health agent(s):

620 Name: _____

621 Address: _____

622 Telephone Numbers: _____

623 (Home, Work, and Mobile)

624 Back-up Agent's Acceptance: I have read this form, and I certify that I do not, have not,
625 and will not provide mental health care and treatment for: (your name)

626 _____

627 I accept the designation as agent for: (your name) _____

628 (Back-up agent's signature and date) _____

629 Name: _____

630 Address: _____

631 Telephone Numbers: _____

632 (Home, Work, and Mobile)

633 Back-up Agent's Acceptance: I have read this form, and I certify that I do not, have not,
 634 and will not provide mental health care and treatment for: (your name)
 635 _____
 636 I accept the designation as agent for: (your name) _____
 637 (Back-up agent's signature and date) _____

638 **(8) GENERAL POWERS OF MENTAL HEALTH AGENT**

639 My mental health agent will make mental health care decisions for me when I have been
 640 determined in the opinion of a physician or licensed psychologist who has personally
 641 examined me, or in the opinion of a court, to lack the capacity to understand the risks and
 642 benefits of, and the alternatives to, a mental health care decision under consideration and
 643 I am unable to give or communicate rational reasons for my mental health care decisions
 644 because of impaired thinking, impaired ability to receive and evaluate information, or
 645 other cognitive disability.

646 My mental health agent will have the same authority to make any mental health care
 647 decision that I could make. My mental health agent's authority includes, for example, the
 648 power to:

- 649 •Admit me to or discharge me from any facility;
- 650 •Request, consent to, authorize, or withdraw consent to any type of provider or mental
 651 health care that is consistent with my instructions in PART ONE of this form and
 652 subject to the limitations set forth in Section (4) of PART ONE; and
- 653 •Contract for any health care facility or service for me, and to obligate me to pay for
 654 these services (and my mental health agent will not be financially liable for any services
 655 or care contracted for me or on my behalf).

656 My mental health agent will be my personal representative for all purposes of federal or
 657 state law related to privacy of medical records (including the Health Insurance Portability
 658 and Accountability Act of 1996) and will have the same access to my medical records
 659 that I have and can disclose the contents of my medical records to others for my ongoing
 660 mental health care.

661 My mental health agent may accompany me in an ambulance or air ambulance if in the
 662 opinion of the ambulance personnel protocol permits a passenger, and my mental health
 663 agent may visit or consult with me in person while I am in a facility if its protocol permits
 664 visitation.

665 My mental health agent may present a copy of this psychiatric advance directive in lieu
666 of the original, and the copy will have the same meaning and effect as the original.

667 I understand that under Georgia law:

- 668 •My mental health agent may refuse to act as my mental health agent; and
- 669 •A court can take away the powers of my mental health agent if it finds that my mental
- 670 health agent is not acting in accordance with my treatment instructions given in my
- 671 directive.

672 **(9) GUIDANCE FOR MENTAL HEALTH AGENT**

673 In the event my directive is being used, my agent should first look at my instructions as
674 expressed in PART ONE. If a situation occurs for which I have not expressed a
675 preference, or in the event my preference is not available, my mental health agent should
676 think about what action would be consistent with past conversations we have had, my
677 treatment preferences as expressed in PART ONE, my religious and other beliefs and
678 values, and how I have handled medical and other important issues in the past. If what
679 I would decide is still unclear, then my mental health agent should make decisions for me
680 that my mental health agent believes are in my best interests, considering the benefits,
681 burdens, and risks of my current circumstances and treatment options.

682 I impose the following limitations on my agent's authority to act on my behalf:

683 _____

684 _____

685 _____

686 **(10) WHEN SPOUSE IS MENTAL HEALTH AGENT AND THERE HAS BEEN**
687 **A DIVORCE OR ANNULMENT OF OUR MARRIAGE**

688 *[Initial if you agree with this statement; leave blank if you do not.]*

689 _____ I desire the person I have named as my agent, who is now my spouse, to
690 remain as my agent even if we become divorced or our marriage is annulled.

691 **PART THREE: OTHER RELATED ISSUES**

692 *[PART THREE is optional. This psychiatric advance directive will be effective even if*
693 *PART THREE is left blank.]*

694 **(11) GUIDANCE FOR LAW ENFORCEMENT**

695 I typically react to law enforcement in the following ways:

696 _____

697 _____

698 _____

699 The following person(s) may be helpful in the event of law enforcement involvement:

700 Name: _____ Telephone Number: _____

701 Relationship: _____

702 Name: _____ Telephone Number: _____

703 Relationship: _____

704 **(12) HELP FROM OTHERS**

705 The following people are part of my support system (child care, pet care, getting my mail,
706 paying my bills, etc.) and should be contacted in the event of a crisis:

707 Name: _____ Telephone Number: _____

708 Responsibility: _____

709 Name: _____ Telephone Number: _____

710 Responsibility: _____

711 Name: _____ Telephone Number: _____

712 Responsibility: _____

713

<u>PART FOUR: EFFECTIVENESS AND SIGNATURES</u>

714 This psychiatric advance directive will become effective only if I have been determined
715 in the opinion of a physician or licensed psychologist who has personally examined me,
716 or in the opinion of a court, to lack the capacity to understand the risks and benefits of,
717 and the alternatives to, a mental health care decision under consideration and I am unable
718 to give or communicate rational reasons for my mental health care decisions because of
719 impaired thinking, impaired ability to receive and evaluate information, or other cognitive
720 disability.

721 This form revokes any psychiatric advance directive, advance directive for health care,
722 durable power of attorney for health care, health care proxy, or living will that I have
723 completed before this date to the extent that such other documents relate to mental health
724 care and are inconsistent with this document.

725 Unless I have initialed below and have provided alternative future dates or events, this
726 psychiatric advance directive will become effective at the time I sign it and will remain
727 effective until my death.

728 _____ (Initials) This psychiatric advance directive will become effective on or
729 upon (date) _____ and will terminate on or upon (date) _____.

730 [You must sign and date or acknowledge signing and dating this form in the presence of
731 two witnesses.

732 Both witnesses must be of sound mind and must be at least 18 years of age, but the
733 witnesses do not have to be together or present with you when you sign this form.

734 A witness:

735 •Cannot be a person who was selected to be your mental health agent or back-up
736 mental health agent in PART TWO;

737 •Cannot be a provider who is providing mental health care to you at the time you
738 execute this directive or an employee of such provider unless the witness is your family
739 member, friend, or associate and is not directly involved in your mental health care;
740 and

741 •Cannot be an employee of the Department of Behavioral Health and Developmental
742 Disabilities or of a local public mental health agency or of any organization that
743 contracts with a local public mental health authority unless the witness is your family
744 member, friend, or associate and is not directly involved in your mental health care.]

745 By signing below, I state that I am of sound mind and capable of making this psychiatric
746 advance directive and that I understand its purpose and effect.

747 _____
748 (Signature of Declarant) (Date)

749 The declarant signed this form in my presence or acknowledged signing this form to me.
750 Based upon my personal observation, the declarant appeared to be of sound mind and
751 mentally capable of making this psychiatric advance directive and signed this form
752 willingly and voluntarily.

753 _____
754 (Signature of First Witness) (Date)

755 Print Name: _____

756 Address: _____

757 _____

758 (Signature of Second Witness) (Date)

759 Print Name: _____

760 Address: _____

761 [This form does not need to be notarized.]"

762 PART II

763 CROSS-REFERENCES

764 SECTION 2-1.

765 Code Section 16-5-5 of the Official Code of Georgia Annotated, relating to assisted suicide,
766 is amended by revising paragraphs (3) and (4) of subsection (c) as follows:

767 "(3) Any person prescribing, dispensing, or administering medications or medical
768 procedures pursuant to, without limitation, a living will, a durable power of attorney for
769 health care, an advance directive for health care, a psychiatric advance directive, or a
770 consent pursuant to Code Section 29-4-18 or 31-9-2 when such actions are calculated or
771 intended to relieve or prevent a patient's pain or discomfort but are not calculated or
772 intended to cause such patient's death, even if the medication or medical procedure may
773 have the effect of hastening or increasing the risk of death;

774 (4) Any person discontinuing, withholding, or withdrawing medications, medical
775 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a
776 durable power of attorney for health care, an advance directive for health care, a
777 psychiatric advance directive, a consent pursuant to Code Section 29-4-18 or 31-9-2, or
778 a written order not to resuscitate; or"

779 SECTION 2-2.

780 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
781 paragraphs (1) and (1.1) of subsection (a) of Code Section 31-9-2, relating to persons
782 authorized to consent to surgical or medical treatment, as follows:

783 "(1) Any adult, for himself or herself, whether by living will, advance directive for health
784 care, psychiatric advance directive under Chapter 11 of Title 37, or otherwise;

785 (1.1) Any person authorized to give such consent for the adult under an advance directive
 786 for health care or durable power of attorney for health care under Chapter 32 of this title
 787 or psychiatric advance directive under Chapter 11 of Title 37;"

788 **SECTION 2-3.**

789 Said title is further amended by revising paragraph (3) of PART ONE of the form contained
 790 in Code Section 31-32-4, relating to the advance directive for health care form, as follows:

791 **"(3) GENERAL POWERS OF HEALTH CARE AGENT**

792 My health care agent will make health care decisions for me when I am unable to
 793 communicate my health care decisions or I choose to have my health care agent
 794 communicate my health care decisions.

795 My health care agent will have the same authority to make any health care decision that
 796 I could make. My health care agent's authority includes, for example, the power to:

- 797 •Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or
 798 other health care facility or service;
- 799 •Request, consent to, withhold, or withdraw any type of health care; and
- 800 •Contract for any health care facility or service for me, and to obligate me to pay for
 801 these services (and my health care agent will not be financially liable for any services
 802 or care contracted for me or on my behalf).

803 My health care agent will be my personal representative for all purposes of federal or
 804 state law related to privacy of medical records (including the Health Insurance Portability
 805 and Accountability Act of 1996) and will have the same access to my medical records
 806 that I have and can disclose the contents of my medical records to others for my ongoing
 807 health care.

808 My health care agent may accompany me in an ambulance or air ambulance if in the
 809 opinion of the ambulance personnel protocol permits a passenger, and my health care
 810 agent may visit or consult with me in person while I am in a hospital, skilled nursing
 811 facility, hospice, or other health care facility or service if its protocol permits visitation.

812 My health care agent may present a copy of this advance directive for health care in lieu
 813 of the original, and the copy will have the same meaning and effect as the original.

814 I understand that under Georgia law:

- 815 •My health care agent may refuse to act as my health care agent;

- 816 •A court can take away the powers of my health care agent if it finds that my health
 817 care agent is not acting properly; and
- 818 •My health care agent does not have the power to make health care decisions for me
 819 regarding psychosurgery, sterilization, or involuntary treatment or ~~involuntary~~
 820 hospitalization for mental or emotional illness, developmental disability, or addictive
 821 disease."

822 **SECTION 2-4.**

823 Said title is further amended in subsection (a) of Code Section 31-32-10, relating to
 824 immunity from liability or disability action, by deleting "and" at the end of paragraph (4), by
 825 replacing the period with "; and" at the end of paragraph (5), and by adding a new paragraph
 826 to read as follows:

827 "(6) In the event a declarant has appointed a mental health agent in accordance with
 828 Chapter 11 of Title 37, no health care provider, health care facility, or person who relies
 829 in good faith on the direction of such mental health agent shall be subject to civil liability,
 830 criminal prosecution, or discipline for unprofessional conduct for complying with any
 831 direction or decision of such mental health agent in the event the declarant's condition is
 832 subsequently determined to be a health care condition."

833 **PART III**

834 **REPEALER**

835 **SECTION 3-1.**

836 All laws and parts of laws in conflict with this Act are repealed.