

Senate Bill 55

By: Senator McKoon of the 29th

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 notification of licensing board
16 regarding violation and health, respectively, so as to include cross-references to the
17 psychiatric advance directive and provide for consistent terminology; to provide for related
18 matters; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 PART I
21 PSYCHIATRIC ADVANCE DIRECTIVE
22 SECTION 1-1.

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

24 **SECTION 1-2.**

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

27 **"CHAPTER 11**28 **37-11-1.**

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

31 **37-11-2.**32 As used in this chapter, the term:33 (1) 'Capable' means a declarant is not incapable of making mental health care decisions.34 (2) 'Competent adult' means a person of sound mind who is 18 years of age or older or
35 is an emancipated minor.36 (3) 'Declarant' means the person who has executed a psychiatric advance directive
37 authorized by this chapter.38 (4) 'Facility' means a hospital, skilled nursing facility, hospice, institution, home,
39 residential or nursing facility, treatment facility, and any other facility or service which
40 has a valid permit or provisional permit issued under Chapter 7 of this title or which is
41 licensed, accredited, or approved under the laws of any state, and includes hospitals
42 operated by the United States government or by any state or subdivision thereof.43 (5) 'Incapable of making mental health care decisions' means that, in the opinion of a
44 physician or licensed psychologist who has personally examined a declarant, or in the
45 opinion of a court, a declarant lacks the capacity to understand the risks and benefits of,
46 and the alternatives to, a mental health care decision under consideration and is unable
47 to give or communicate rational reasons for mental health care decisions because of
48 impaired thinking, impaired ability to receive and evaluate information, or other cognitive
49 disability.50 (6) 'Mental health agent' or 'agent' means a person appointed by a declarant to act for and
51 on behalf of such declarant to make decisions related to mental health care when such
52 declarant is incapable of making mental health care decisions. Such term shall include
53 any alternate mental health agent appointed by a declarant.54 (7) 'Mental health care' means any care, treatment, service, or procedure to maintain,
55 diagnose, treat, or provide for a declarant's mental health.56 (8) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter
57 34 of Title 43 and, if the declarant is receiving mental health care in another state, a
58 person lawfully licensed in such state.

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

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

67 37-11-3.

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

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

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

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

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

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

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

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

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

85 (d) If a declarant chooses not to appoint an agent, the instructions and desires of a
86 declarant as set forth in the directive shall be followed to the fullest extent possible by
87 every provider or facility to whom the directive is communicated, subject to the right of the
88 provider or facility to refuse to comply with the directive as set forth in Code Section
89 37-11-11.

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

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

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

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

102 37-11-4.

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

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

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

109 (d) An agent appointed by a declarant:

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

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

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

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

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

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

128 (I) Unavailable;

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

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

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

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

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

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

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

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

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

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

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

156 37-11-5.

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

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

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

175 37-11-6.

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

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

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

185 37-11-7.

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

191 37-11-8.

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

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

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

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

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

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

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

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

216 37-11-9.

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

220 37-11-10.

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

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

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

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

234 37-11-11.

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

237 (A) Unavailable;

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

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

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

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

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

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

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

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

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

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

272 37-11-12.

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

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

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

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

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

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

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

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

313 37-11-13.

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

318 37-11-14.

319 (a) The provisions of this chapter shall not apply to or invalidate a valid psychiatric
 320 advance directive executed prior to July 1, 2017.

321 (b) The use of the form set forth in Code Section 37-11-15 or a similar form after July 1,
 322 2017, in the creation of a psychiatric advance directive shall be deemed lawful and, when
 323 such form is used and it meets the requirements of this chapter, it shall be construed in
 324 accordance with the provisions of this chapter.

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

330 37-11-15.

331 **'GEORGIA PSYCHIATRIC ADVANCE DIRECTIVE**

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

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

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

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

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

347 This psychiatric advance directive has four parts:

348 PART ONE STATEMENT OF INTENT AND TREATMENT PREFERENCES.

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

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

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

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

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

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

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

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

391
392

<p><u>PART ONE: STATEMENT OF INTENT</u> <u>AND TREATMENT PREFERENCES</u></p>

393 [PART ONE will become effective only if you have been determined in the opinion of a
 394 physician or licensed psychologist who has personally examined you, or in the opinion of
 395 a court, to lack the capacity to understand the risks and benefits of, and the alternatives to,
 396 a mental health care decision under consideration and you are unable to give or
 397 communicate rational reasons for mental health care decisions because of impaired

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

407 **(1) STATEMENT OF INTENT**

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

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

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

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

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

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

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

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

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

443 _____
444 _____
445 _____

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

448 _____
449 _____
450 _____

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

452 _____
453 _____
454 _____

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

457 _____
458 _____
459 _____

460 **(3) PREFERRED CLINICIANS**

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

463 Name and telephone numbers:

464 _____
465 _____
466 _____

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

468 Names:

469 _____
470 _____
471 _____

472 I refuse to be treated by the following clinicians:

473 Names:

474 _____
475 _____
476 _____

477 **(4) TREATMENT INSTRUCTIONS**

478 **Medications**

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

482 _____
483 _____
484 _____

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

487 _____
488 _____
489 _____

490 I cannot tolerate the following medications because:

491 _____
492 _____
493 _____

494 I am allergic to the following medications:

495 _____
496 _____
497 _____

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

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

506 Medication in pill form: Yes No

507 Reason:

508 Liquid medication: Yes No

509 Reason:

510 Medication by injection: Yes No

511 Reason:

512 Covert medication

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

514 Reason:

515 **Hospitalization is Not My First Choice**

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

518 _____

519 _____

520 _____

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

522 _____

523 _____

524 _____

525 Additional instructions that may help me avoid a hospitalization:

526 _____

527 _____

528 _____

529 **Treatment Facilities**

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

532 _____
 533 _____
 534 _____

535 I refuse to be treated at the following facilities:

536 _____
 537 _____
 538 _____

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

540 _____
 541 _____
 542 _____

543 I generally react to being hospitalized as follows:

544 _____
 545 _____
 546 _____

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

548 _____
 549 _____
 550 _____

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

552 _____
 553 _____
 554 _____

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

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

558 Seclusion: _____ Yes _____ No _____

559 Reason: _____

560 Physical restraints: _____ Yes _____ No _____

561 Reason: _____

562 Experimental treatment: _____ Yes _____ No _____

563 Reason: _____

564 Electroconvulsive therapy (ECT): _____ Yes _____ No _____

565 Reason: _____

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

567 _____
568 _____
569 _____

570 Other instructions as to my preferred interventions:

571 _____
572 _____
573 _____

574 **(5) ADDITIONAL STATEMENTS**

575 [This section is optional. This PART will be effective even if this section is left blank.
576 This section allows you to state additional treatment preferences, to provide additional
577 guidance to your mental health agent (if you have selected a mental health agent in PART
578 TWO), or to provide information about your personal and religious values about your
579 medical treatment. Understanding that you cannot foresee everything that could happen
580 to you, you may want to provide guidance to your mental health agent (if you have
581 selected a mental health agent in PART TWO) about following your treatment
582 preferences.]

583 _____
584 _____
585 _____

586

<u>PART TWO: MENTAL HEALTH AGENT</u>

587 [PART ONE will be effective even if PART TWO is not completed. If you do not wish to
588 appoint an agent, do not complete PART TWO. A provider who is directly involved in
589 your health care or any employee of that provider may not serve as your mental health
590 agent unless such employee is your family member, friend, or associate and is not directly
591 involved in your health care. An employee of the Department of Behavioral Health and
592 Developmental Disabilities or of a local public mental health agency or of any
593 organization that contracts with a local public mental health authority may not serve as
594 your mental health agent unless such person is your family member, friend, or associate
595 and is not directly involved in your health care. If you are married, a future divorce or
596 annulment of your marriage will revoke the selection of your current spouse as your
597 mental health agent unless you indicate otherwise in Section (10) of this PART. If you
598 are not married, a future marriage will revoke the selection of your mental health agent
599 unless the person you selected as your mental health agent is your new spouse.]

600 **(6) MENTAL HEALTH AGENT**

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

603 Name: _____

604 Address: _____

605 Telephone Numbers: _____

606 (Home, Work, and Mobile)

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

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

610 (Agent's signature and date) _____

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

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

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

617 Name: _____

618 Address: _____

619 Telephone Numbers: _____

620 (Home, Work, and Mobile)

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

623 _____

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

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

626 Name: _____

627 Address: _____

628 Telephone Numbers: _____

629 (Home, Work, and Mobile)

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

632 _____

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

634 (Back-up agent's signature and date)

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

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

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

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

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

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

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

664 I understand that under Georgia law:

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

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

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

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

680 _____

681 _____

682 _____

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

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

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

688 **PART THREE: OTHER RELATED ISSUES**

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

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

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

693 _____

694 _____

695 _____

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

697 Name: _____ Telephone Number: _____

698 Relationship: _____

699 Name: _____ Telephone Number: _____

700 Relationship: _____

701 **(12) HELP FROM OTHERS**

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

704 Name: _____ Telephone Number: _____

705 Responsibility: _____

706 Name: _____ Telephone Number: _____

707 Responsibility: _____

708 Name: _____ Telephone Number: _____

709 Responsibility: _____

710

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

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

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

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

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

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

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

731 A witness:

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

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

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

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

744 _____
745 (Signature of Declarant) (Date)

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

750 _____
751 (Signature of First Witness) (Date)

752 Print Name: _____

753 Address: _____

754 _____

755 (Signature of Second Witness)

(Date)

756 Print Name: _____

757 Address: _____

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

PART II

CROSS-REFERENCES

SECTION 2-1.

762 Code Section 16-5-5 of the Official Code of Georgia Annotated, relating to assisted suicide
763 and notification of licensing board regarding violation, is amended by revising paragraphs
764 (3) and (4) of subsection (c) as follows:

765 "(3) Any person prescribing, dispensing, or administering medications or medical
766 procedures pursuant to, without limitation, a living will, a durable power of attorney for
767 health care, an advance directive for health care, a psychiatric advance directive, a
768 Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14,
769 or a consent pursuant to Code Section 29-4-18 or 31-9-2 when such actions are calculated
770 or intended to relieve or prevent a patient's pain or discomfort but are not calculated or
771 intended to cause such patient's death, even if the medication or medical procedure may
772 have the effect of hastening or increasing the risk of death;

773 (4) Any person discontinuing, withholding, or withdrawing medications, medical
774 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a
775 durable power of attorney for health care, an advance directive for health care, a
776 psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form
777 pursuant to Code Section 31-1-14, a consent pursuant to Code Section 29-4-18 or 31-9-2,
778 or a written order not to resuscitate; or"

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.