

House Bill 607

By: Representatives Gardner of the 57<sup>th</sup>, Oliver of the 82<sup>nd</sup>, Willard of the 51<sup>st</sup>, Dreyer of the 59<sup>th</sup>, and Welch of the 110<sup>th</sup>

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 request and consent to admission or discharge 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 PART ONE: STATEMENT OF INTENT  
 392 AND TREATMENT PREFERENCES

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 \_\_\_\_\_



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 

<b><u>PART TWO: MENTAL HEALTH AGENT</u></b>
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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 •Request and consent to admission or discharge 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 

<b><u>PART FOUR: EFFECTIVENESS AND SIGNATURES</u></b>
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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.]*"

759 PART II

760 CROSS-REFERENCES

761 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"

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 •Request and consent to admission or discharge from any hospital, skilled nursing  
 798 facility, hospice, or 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.