A Review of Statutes Related to Georgia Health Care Decision-Making (Post Schiavo)

[Excerpt:]

[T]hen as now, their families took their battles to the Supreme Court. Letters poured into each state's governor's office, begging for intervention. But the difference lies in where the battle lines were drawn.

"The big difference is with Cruzan, you had the family united and pitted against the (state), and with Schiavo, you've got family members pitted against each other," said William Colby, the lawyer who took the Cruzan family battle to the U.S. Supreme Court. That court upheld a Missouri Supreme Court ruling that the feeding tube could not be removed without "clear and convincing evidence" that Cruzan would have wanted it removed.

[Source: ***Florida feeding-tube controversy has parallels in Missouri case, BY KAREN BRANCH-BRIOSO, St. Louis Post-Dispatch Washington Bureau (****Oct. 31, 2003)]*

The text of many Georgia statutes relating to health care decision making and access to medical records appear below. In many cases, the patient will be able to make his or her own decisions. However, where the patient is incapacitated, advanced planning ensures that the patietn's wishes are carried out.

The decision maker, if not the patient himself/herself, must have power to act. Further, decisions cannot (or should not) be made in a vacuum so access to medical records and other information is critical. Without information, the decision maker cannot participate meaningfully in the process and cannot exercise "informed consent."

An "Advanced Directive" is a personal contingency plan that empowers a substitute (or surrogate) to make health care decisions for the patient. In Georgia, there are three tools that can be used to achieve the patient's goals. The first, and best, is the Durable Power of Attorney for Health Care. The second is a Living Will. The third is a "do not resuscitate" order. Each tool has a different purpose and, again, because circumstances change, the Durable Power of Attorney for Health Care provides more flexibility so it is an essential tool.

Citation	Statutory Language	Comments
16-5-70(a)	(a) A parent, **guardian**, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child's **health** or well-being is jeopardized.	Criminal statute; cruelty to children.
16-5-100(a)	(a) **A guardian or other person supervising the welfare of or**	Criminal Statute regarding cruelty to

	having immediate charge or custody of a person who is 65 years of age or older commits the offense of cruelty to a person who is 65 years of age or older when the person willfully deprives a person who is 65 years of age or older of health care, shelter, or necessary sustenance to the extent that the health or well-being of a person who is 65 years of age or older is jeopardized. (b) The provisions of this Code section shall not apply to a physician nor any person acting under his or her direction nor to a hospital, skilled nursing facility, hospice, nor any agent or employee thereof **who is in good faith following a course of treatment** developed in accordance with accepted medical standards or who is acting in good faith in accordance with a living will as provided in Chapter 32 of Title 31, a durable **power** of **attorney** for **health care** as provided in Chapter 36 of Title 31, an order not to resuscitate as provided in Chapter 39 of Title 31, or the instructions of the patient or the patient's lawful surrogate decision maker, nor shall the provisions of this Code section require any physician, any institution licensed in accordance with Chapter 7 of Title 31 or any employee or agent thereof to provide **health care** services or shelter to any person in the absence of another legal obligation to do so.	Elders. Exempts persons following course of treatment who is acting in good faith consistent with a living will, DPOAHC, DNR, or pursuant to patient instructions or instructions from an authorized surrogate. Does not impose a duty to provide services in the absence of another legal obligation to do so.
29-9-40	(a) No physician licensed under Chapter 34 of Title 43 and no hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit, shall be required to release any medical information concerning a patient except to the Department of Human Resources, its divisions, agents, or successors when required in the administration of public health programs pursuant to Code Section 31-12-2 and where authorized or required by law, statute, or lawful regulation; or on written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or on appropriate court order or subpoena; provided, however, that any physician, hospital, or health care facility releasing information under written authorization or other waiver by the patient, or by his or her parents or guardian ad litem in the case of a minor, or pursuant to law, statute, or lawful regulation, or under court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his care and treatment or the nature and extent of his injuries at issue in any civil or criminal proceeding. This Code section shall not apply to psychiatrists or to hospitals in which the patient is being or has been treated solely for mental illness. (b) No pharmacist licensed under Chapter 4 of Title 26 shall be required to release any medical information concerning a patient except on written authorization or other waiver by the patient, or by his or her parents or duly	Immunity for release of medical information. Each section in this outline providing for the release of medical information implicates the concept of informed consent. "The second principle of consent in the medical context is "informed" consent, which addresses **the autonomy of a competent patient** to determine what medical treatment he will allow or refuse. As Justice Rehnquist noted in the ***Cruzan*** *v. Director, Mo. Dept. of Health*, discussed later in this opinion, the United States Supreme Court observed as far back as 1891 that " 'no right is held more sacred, or is more carefully guarded, by the common law' " than an individual's right to possession and control of his own person free from restraint, a notion of bodily integrity

	appointed guardian ad litem in the case of a minor, or upon appropriate court order or subpoena; provided, however, that any pharmacist releasing information under written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or upon appropriate court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his or her care and treatment or the nature and extent of his or her injuries at issue in any administrative, civil, or criminal proceeding.	embodied in the requirement that informed consent is generally required for medical treatment. Informed consent essentially involves a medical professional fully informing a patient of the risks of and alternatives to the proposed treatment so that the patient's right to decide is not diminished by a lack of relevant information." Quoted in **Ketchup v. Howard,** 543 S.E.2d 371 (Ga.App.,2000).
31-8-114	Each resident shall enjoy the right of privacy including, but not limited to, the following: ... (7) The right to receive confidential treatment of the resident's personal and medical records. Only the resident or **guardian** may approve the release or disclosure of such records to any individual outside the facility, except in case of (A) the resident's transfer to another **health** care facility, (B) during a medicare, Medicaid, licensure, medical care foundation, or peer review survey, or (C) as otherwise provided by law or third-party payment contract.	Confidential treatment of nursing home records.
31-9-2	(a) In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician: (1) Any adult, for himself, whether by living will or otherwise; (1.1) Any person authorized to give such consent for the adult under a **health care** agency complying with Chapter 36 of Title 31, the "Durable **Power** of **Attorney** for **Health Care** Act"; (2) In the absence or unavailability of a living spouse, any parent, whether an adult or a minor, for his minor child; (3) Any married person, whether an adult or a minor, for himself and for his spouse; (4) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care; and any guardian, for his ward; (5) Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth; (6) Upon the inability of any adult to consent for himself and in the absence of any person to consent under paragraphs (2) through (5) of this subsection, the following persons in the following order of priority: (A) Any adult child for his parents; (B) Any parent for his adult child; (C) Any adult for his brother or sister; or	Persons who may consent to medical treatment for another In the absence of above persons, the following may consent to treatment for another: Adult children for parent; Parent for adult child;

	(D) Any grandparent for his grandchild. (b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures **which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided**. (c) For purposes of this Code section, "inability of any adult to consent for himself" shall mean a determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult "lacks sufficient understanding or capacity to make significant responsible decisions" regarding his medical treatment or the ability to communicate by any means such decisions.	Adult for brother or sister; Grandparent for grandchild. Required to pursue what patient would have wanted.
31-9-6.1(a)	(a) Except as otherwise provided in this Code section, any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia or any person who undergoes an amniocentesis diagnostic procedure or a diagnostic procedure which involves the intravenous or intraductal injection of a contrast material must consent to such procedure and **shall be informed in general terms of the following**: (1) A diagnosis of the patient's condition requiring such proposed surgical or diagnostic procedure; (2) The nature and purpose of such proposed surgical or diagnostic procedure; (3) The material risks generally recognized and accepted by reasonably prudent physicians of infection, allergic reaction, severe loss of blood, loss or loss of function of any limb or organ, paralysis or partial paralysis, paraplegia or quadriplegia, disfiguring scar, brain damage, cardiac arrest, or death involved in such proposed surgical or diagnostic procedure which, if disclosed to a reasonably prudent person in the patient's position, could reasonably be expected to cause such prudent person to decline such proposed surgical or diagnostic procedure on the basis of the material risk of injury that could result from such proposed surgical or diagnostic procedure; (4) The likelihood of success of such proposed surgical or diagnostic procedure; (5) The practical alternatives to such proposed surgical or diagnostic procedure which are generally recognized and accepted by reasonably prudent physicians; and (6) The prognosis of the patient's condition if such proposed surgical or diagnostic procedure is rejected	Informed consent; procedure for obtaining. *Cited* in *Ketchup, supra*. Health care decision making is a process. Unless the patient receives the information described in the statute, the patient cannot participate meaningfully in the process and has, essentially, delegated the decision to his or her health care provider.
31-32-1	(a) The General Assembly finds that modern medical technology has made possible the artificial prolongation of human life. (b) The General Assembly further finds that, **in the interest of protecting**	Legislative finding underlying Living Wills.

	individual autonomy, such prolongation of life for persons with a terminal condition, a coma, or a persistent vegetative state may cause loss of patient dignity and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient. (c) The General Assembly further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use of life-sustaining procedures in certain situations. (d) **In recognition of the dignity and privacy** which patients have a right to expect, the General Assembly declares that the laws of the State of Georgia shall recognize **the right of a competent adult person** to make a written directive, known as a living will, instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state.	See generally ***Cruzan v. Director, MDH***, 497 U.S. 261, 269, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990) ("Every human being of adult years and sound mind has a right to determine what shall be done with his own body"); cited in **Barnhill v. State,** 575 S.E.2d 460 (Ga.,2003).
31-32-2	As used in this chapter, the term: (1) **'Attending physician'** means the physician who has been selected by or assigned to the patient and who has assumed primary responsibility for the treatment and care of the patient; provided, however, that if the physician selected by or assigned to the patient to provide such treatment and care directs another physician to assume primary responsibility for such care and treatment, the physician who has been so directed shall, upon his or her assumption of such responsibility, be the 'attending physician.' (2) '**Coma**' means a profound state of unconsciousness caused by disease, injury, poison, or other means and for which it has been determined that there exists no reasonable expectation of regaining consciousness. The procedure for establishing a coma is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that: (A) The declarant has been in a profound state of unconsciousness for a period of time sufficient for the declarant´s physicians to conclude that the unconscious state will continue; and (B) There exists no reasonable expectation that the declarant will regain consciousness. (3) **'Competent adult'** means a person of sound mind who is 18 years of age or older. (4) '**Declarant**' means a person who has executed a living will authorized by this chapter. (5) '**Hospital'** means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care	

	of injured, disabled, or sick persons. (6) **'Life-sustaining procedures'** means any medical procedures or interventions, which, when applied to a patient in a terminal condition or in a coma or persistent vegetative state with no reasonable expectation of regaining consciousness or significant cognitive function, would serve only to prolong the dying process and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term 'life-sustaining procedures' may include, at the option of the declarant, the provision of nourishment and hydration, but shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain. (7) **'Living will'** means a written document voluntarily executed by the declarant in accordance with the requirements of Code Section 31-32-3 or 31-32-4. (8) '**Patient**' means a person receiving care or treatment from a physician. (9) **'Persistent vegetative state'** means a state of severe mental impairment in which only involuntary bodily functions are present and for which there exists no reasonable expectation of regaining significant cognitive function. The procedure for establishing a persistent vegetative state is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that: (A) The declarant´s cognitive function has been substantially impaired; and (B) There exists no reasonable expectation that the declarant will regain significant cognitive function. (10) '**Physician'** means a person lawfully licensed in this state to practice medicine and surgery pursuant to Article 2 of Chapter 34 of Title 43. (11) **'Reasonable expectation'** means the result of prudent judgment made on the basis of the medical judgment of a physician. (12) **'Skilled nursing facility'** means a facility having a valid permit or provisional permit issued under Chapter 7 of this title and which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. (13) **'Terminal condition'** means incurable condition caused by disease, illness, or injury which, regardless of the application of life-sustaining procedures, would produce death. **The procedure for establishing a terminal condition is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the**	

	declarant, shall certify in writing, based upon conditions found during the course of their examination, that: (A) There is no reasonable expectation for improvement in the condition of the declarant; and (B) Death of the declarant from these conditions will occur as a result of such disease, illness, or injury.	
31-32-3	(a) Any competent adult may execute a document directing that, should the declarant have a terminal condition, life-sustaining procedures be withheld or withdrawn. Such living will shall be signed by the declarant in the presence of at least **two competent adults** who, at the time of the execution of the living will, to the best of their knowledge: (1) Are **not related** to the declarant by blood or marriage; (2) **Would not be entitled to any portion of the estate** of the declarant upon the declarant´s decease under any testamentary will of the declarant, or codicil thereto, and would not be entitled to any such portion by operation of law under the rules of descent and distribution of this state at the time of the execution of the living will; (3) **Are neither the attending physician nor an employee of the attending physician nor an employee of the hospital or skilled nursing facility in which the declarant is a patient**; (4) Are **not directly financially responsible** for the declarant´s medical care; and (5) Do not have a claim against any portion of the estate of the declarant. (b) The declaration shall be a document, separate and self-contained. Any declaration which constitutes an expression of the declarant´s intent shall be honored, regardless of the form used or when executed. Declarations executed on or after March 28, 1986, shall be valid indefinitely unless revoked. A declaration similar to the following form or in substantially the form specified under prior law shall be presumed on its face to be valid and effective: **(statutory form)**	Living Will; witnesses; qualifications. A living will that does not meet the requirements of this statute is invalid. The statutory form is available at: http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=31-32-3.
31-32-4	A living will shall have no force or effect if the declarant is a patient in a hospital or skilled nursing facility at the time the living will is executed unless the living will is signed in the presence of the two witnesses as provided in Code Section 31-32-3 and, additionally, is signed in the presence of either the chief of the hospital medical staff, any physician on the medical staff who is not participating in the care of the patient, or a person on the hospital staff who is not participating in the care of the patient designated by the chief of staff and the hospital administrator, if witnessed in a hospital, or	Living Will signed in hospital or skilled nursing facility must be signed in presence of MD not participating in treatment.

	the medical director or any physician on the medical staff who is not participating in the care of the patient, if witnessed in a skilled nursing facility.	
31-32-5	(a) A living will may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods: (1) By being canceled, defaced, obliterated, burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction; (2) By the declarant or a person acting at the direction of the declarant signing and dating a written revocation expressing the intent of the declarant to revoke. In order to be effective, such a written revocation must clearly express an intention to revoke a living will as opposed to a will or wills relating to the disposition of property after death; and without limiting the generality of the foregoing, it is specifically provided that the revocation clause which is customarily included in a will relating to the disposition of property and which provides for the revocation of 'all other wills' of the testator shall not operate to revoke a living will without further evidence of a specific intent to revoke the living will. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting at the direction of the declarant. The attending physician shall record in the patient´s medical record the time and date when he received notification of the written revocation; or (3) By any verbal or nonverbal expression by the declarant of his intent to revoke the living will. In order to be effective, such an oral revocation must clearly express an intention to revoke a living will as opposed to a will relating to the disposition of property after death. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting at the direction of the declarant. The attending physician shall record in the patient´s medical record the time, date, and place of the revocation and the time, date, and place, if different, when he received notification of the revocation. (b) **Any person who participates in the withholding or withdrawal of life-sustaining procedures pursuant to a living will, as authorized by this chapter, which person has actual knowledge that such living will has been properly revoked, shall not have any civil or criminal immunity otherwise granted under this chapter for such conduct**.	Living Will may be revoked without regard to mental state or competency
31-32-6	(a) A living will executed on or after March 28, 1986, shall be effective from the date of execution thereof unless revoked in a manner prescribed in Code Section 31-32-5. (b) A living will executed prior to March 28, 1986, in the form specified by	

	prior law shall be effective for a period of seven years from the date of execution thereof, except that, if the declarant crosses through or otherwise marks over the paragraph of such a living will relating to the seven-year period of effectiveness of the living will so as to indicate an intention to defeat the operation of such paragraph, and if the declarant signs or initials the living will in the area of the stricken paragraph, then the living will shall continue in effect until and unless revoked in a manner prescribed in Code Section 31-32-5.	
31-32-7	(a) No physician nor any person acting under his direction and no hospital, skilled nursing facility, nor any agent or employee thereof who acting in good faith in accordance with the requirements of this chapter causes the withholding or withdrawal of life-sustaining procedures from a patient or who otherwise participates in good faith therein shall be subject to any civil liability therefor. No physician nor any person acting under his direction and no hospital, skilled nursing facility, nor any agent or employee thereof who acting in good faith in accordance with the requirements of this chapter causes the withholding or withdrawal of life-sustaining procedures from a patient or who otherwise participates in good faith therein shall be guilty of any criminal act therefor, nor shall any such person be guilty of unprofessional conduct therefor. (b) No person who witnesses and attests a living will in good faith and in accordance with Code Section 31-32-3 shall be civilly or criminally liable or guilty of unprofessional conduct for such action.	
31-32-8	(a) **Prior to effecting a withholding or withdrawal of life-sustaining procedures from a patient pursuant to a living will, the attending physician:** (1) Shall determine that, to the best of his knowledge, the declarant patient is not pregnant, or if she is, that the fetus is not viable and that the declarant´s living will specifically indicates that the living will is to be carried out; (2) **Shall, without delay after the diagnosis of a terminal condition of the declarant, take the necessary steps to provide for the written certification required by Code Section 31-32-2 of the declarant´s terminal condition, coma, or persistent vegetative state**; (3) Shall make a reasonable effort to determine that the living will complies with subsection (b) of Code Section 31-32-3; and (4) Shall make the living will and the written certification of the terminal condition, coma, or persistent vegetative state a part of the declarant patient's medical records. (b) The living will **shall be presumed**, unless revoked, to be the directions of the declarant regarding the withholding or withdrawal of life-sustaining	Prior to withholding treatment, physician must certify terminal condition.

	procedures. **No person shall be civilly liable for failing or refusing in good faith to effectuate the living will of the declarant patient**. The attending physician who fails or refuses to comply with the declaration of a patient pursuant to this chapter shall endeavor to advise promptly the next of kin or legal guardian of the declarant that such physician is unwilling to effectuate the living will of the declarant patient. The attending physician shall thereafter at the election of the next of kin or the legal guardian of the declarant: (1) Make a good faith attempt to effect the transfer of the qualified patient to another physician who will effectuate the declaration of the patient; or (2) Permit the next of kin or legal guardian to obtain another physician who will effectuate the declaration of the patient.	
31-32-9	(a) The making of a living will pursuant to this chapter shall not, for any purpose, constitute a suicide. (b) The making of a living will pursuant to this chapter shall not restrict, inhibit, or impair in any manner the sale, procurement, issuance, or enforceability of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the making of a living will pursuant to this chapter or by the withholding or withdrawal of life-sustaining procedures from an insured patient, nor shall the making of such a living will or the withholding or withdrawal of such life-sustaining procedures operate to deny any additional insurance benefits for accidental death of the patient in any case in which the terminal condition of the patient is the result of accident, notwithstanding any term of the policy to the contrary. (c) **No physician, hospital, skilled nursing facility, or other health provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall require any person to execute a living will as a condition for being insured for, or receiving, health care services**. (d) No hospital, skilled nursing facility, or other medical or health care facility shall prepare or offer to prepare living wills unless specifically requested to do so by a person desiring to execute a living will. For purposes of this article, a person in the custody of the Department of Corrections shall not be deemed to be a patient within the meaning of this article, nor shall a correctional facility be deemed to be a hospital, skilled nursing facility, nor any other medical or health care facility.	
31-32-10	Any person who willfully conceals, cancels, defaces, obliterates, alters, or damages the living will of another without such declarant´s consent or who	Criminal treatment for concealment, forgery, etc. relating to a Living Will.

	witnesses a living will knowing at the time he is not eligible to witness such living will under Code Section 31-32-3 or who coerces or attempts to coerce a person into making a living will shall be guilty of a misdemeanor. Any person who falsifies or forges the living will of another or willfully conceals or withholds personal knowledge of a revocation as provided in Code Section 31-32-5 with the intent to cause a withholding or withdrawal of life-sustaining procedures **contrary to the wishes** of the declarant and, thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death thereby to be hastened shall be subject to prosecution for criminal homicide as provided in Chapter 5 of Title 16.	
31-32-11	(a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this chapter are cumulative. (b) **Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing** or to permit any affirmative or deliberate act or omission to end life other than to permit the process of dying as provided in this chapter. Furthermore, nothing in this chapter shall be construed to condone, authorize, or approve abortion. (c) This chapter shall create **no presumption concerning the intention** of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state. (d) Unless otherwise specifically provided in a durable **power** of **attorney** for **health care**, a declaration under this chapter is ineffective and inoperative as long as there is an agent available to serve pursuant to a durable **power** of **attorney** executed in accordance with the provisions of Chapter 36 of this title, the "Durable **Power** of **Attorney** for **Health Care** Act," which grants the agent authority with respect to the withdrawal or withholding of life- sustaining or death-delaying treatment under the same circumstances as those covered by a declaration under this chapter.	Living Will ineffective while agent can act under DPOAHC
31-32-12	This chapter is wholly independent of the provisions of Title 53, relating to wills, trusts, and the administration of estates, and nothing in this chapter shall be construed to affect in any way the provisions of said Title 53.	
31-33-2	(a)(1)(A) A provider having custody and control of any evaluation, diagnosis, prognosis, laboratory report, or biopsy slide in a patient's record shall retain such item for a period of not less than ten years from the date such item was created. (B) The requirements of subparagraph (A) of this paragraph shall not apply to:	Power to access patient records.

	(i) An individual provider who has retired from or sold his or her professional practice if such provider has notified the patient of such retirement or sale and offered to provide such items in the patient's record or copies thereof to another provider of the patient's choice and, if the patient so requests, to the patient; or (ii) A hospital which is an institution as defined in subparagraph (B) of paragraph (1) of Code Section 31-7-1, which shall retain patient records in accordance with rules and regulations for hospitals as issued by the department pursuant to Code Section 31-7-2. (2) Upon written request from the patient or a person authorized to have access to the patient's record under a **health care power** of **attorney** for such patient, the provider having custody and control of the patient's record **shall furnish a complete and current copy of that record**, in accordance with the provisions of this Code section. **If the patient is deceased, such request may be made by a person authorized immediately prior to the decedent's death to have access to the patient's record under a health care power of attorney for such patient; the executor, temporary executor, administrator, or temporary administrator for the decedent's estate; or any survivor**, as defined by Code Sections 51-4-2, 51-4-4, and 51-4-5. (b) Any record requested under subsection (a) of this Code section shall be furnished within a reasonable period of time to the patient, any other provider designated by the patient, any person authorized by paragraph (2) of subsection (a) of this Code section to request a patient's or deceased patient's medical records, or any other person designated by the patient. (c) If the provider reasonably determines that disclosure of the record to the patient will be detrimental to the physical or mental health of the patient, the provider may refuse to furnish the record; however, upon such refusal, the patient's record shall, upon written request by the patient, be furnished to any other provider designated by the patient. (d) A provider shall not be required to release records in accordance with this Code section unless and until the requesting person has furnished the provider with a **signed written authorization** indicating that he or she is authorized to have access to the patient's records by paragraph (2) of subsection (a) of this Code section. Any provider shall be justified in relying upon such written authorization. (e) Any provider or person who in good faith releases copies of medical records in accordance with this Code section shall not be found to have violated any criminal law or to be civilly liable to the patient, the deceased patient's estate, or to any other person.	
31-36-1	This chapter shall be known and may be cited as the "Durable **Power** of	DPOAHC

	Attorney for **Health Care** Act."	
31-36-2	(a) The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to decline medical treatment or to direct that it be withdrawn. However, if the individual becomes disabled, incapacitated, or incompetent, his or her right to control treatment may be denied unless the individual, as principal, can **delegate the decision-making power to a trusted agent and be sure that the agent's power to make personal and health care decisions for the principal will be effective to the same extent as though made by the principal**. (b) This recognition of the right of delegation for health care purposes must be stated to make it clear that its scope is intended to be as broad as the comparable right of delegation for property and financial matters. However, the General Assembly recognizes that powers concerning health care decisions are more sensitive than property matters and that particular rules and forms are necessary for health care agencies to ensure their validity and efficacy and to protect health care providers so that they will honor the authority of the agent at all times. **Nothing in this chapter shall be deemed to authorize or encourage euthanasia, suicide**, or any action or course of action that violates the criminal laws of this state or the United States. (c) In furtherance of these purposes, the General Assembly enacts this chapter, setting forth general principles governing **health care** agencies, as well as a statutory short form durable **power** of **attorney** for **health care**, intending that when a **power** in substantially the form set forth in this chapter is used, **health care** providers and other third parties who rely in good faith on the acts and decisions of the agent within the scope of the **power** may do so without fear of civil or criminal liability to the principal, the state, or any other person. However, the form of **health care** agency set forth in this chapter is not intended to be exclusive, and other forms of **powers** of **attorney** chosen by the principal that comply with Code Section 31-36-5 may offer **powers** and protections similar to the statutory short form durable **power** of **attorney** for **health care**.	Purpose is to allow patients to delegate authority to a trusted agent. Does not authorize or encourage euthanasia or suicide. Statutory short form is not exclusive.
31-36-3	As used in this chapter, the term: (1) "**Attending physician**" means the physician who has primary responsibility at the time of reference for the treatment and care of the patient. (2) "**Health care**" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the patient's physical or mental health or personal care. (3) "**Health care** agency" or "agency" means an agency governing any type	Definitions

	of **health care**, anatomical gift, autopsy, or disposition of remains for and on behalf of a patient and refers to the **power** of **attorney** or other written instrument defining the agency, or the agency itself, as appropriate to the context. (4) "**Health care provider**" or "provider" means the attending physician and any other person administering health care to the patient at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person. (5) "**Hospital**" means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons. (6) "**Patient**" means the principal. (7) "Skilled nursing facility" means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.	
31-36-4	The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have **to be informed about and to consent to or refuse or withdraw any type of health care** for the individual. A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy, or disposition of remains. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining or death-delaying procedures in any lawful manner, and the provisions of this chapter are cumulative in such respect.	Powers that an agent can exercise.
31-36-5	(a) A health care agency **shall be in writing and signed by the principal** or by some other person in the principal's presence and by the principal's express direction. A health care agency shall be attested and subscribed in the presence of the principal by two or more competent witnesses who are at least 18 years of age. In addition, if at the time a health care agency is executed the principal is a patient in a hospital or skilled nursing facility, the health care agency shall also be attested and subscribed in the presence of the principal by the principal's attending physician. (b) No health care provider may act as agent under a health care agency if he or she is directly or indirectly involved in the health care rendered to the patient under the health care agency. (c) **An agent under a health care agency shall not have the**	Execution; requirements. A Durable Power of Attorney for Health Care that does not meet the requirements of this section is invalid.

	authority to make a particular health care decision different from or contrary to the patient's decision, if any, if the patient is able to understand the general nature of the health care procedure being consented to or refused, as determined by the patient's attending physician based on such physician's good faith judgment.	
31-36-6	(a) Every health care agency may be revoked by the principal at any time, without regard to the principal's mental or physical condition, by any of the following methods: (1) By being obliterated, burned, torn, or otherwise destroyed or defaced in a manner indicating an intention to revoke; (2) By a written revocation of the agency signed and dated by the principal or by a person acting at the direction of the principal; or (3) By an oral or any other expression of the intent to revoke the agency in the presence of a witness 18 years of age or older who, within 30 days of the expression of such intent, signs and dates a writing confirming that such expression of intent was made. (b) Unless the health care agency expressly provides otherwise, if, after executing a health care agency, the principal marries, such marriage shall revoke the designation of a person other than the principal's spouse as the principal's agent to make health care decisions for the principal; and if, after executing a health care agency, the principal's marriage is dissolved or annulled, such dissolution or annulment shall revoke the principal's former spouse as the principal's agent to make health care decisions for the principal. (c) **A health care agency which survives disability, incapacity, or incompetency shall not be revoked solely by the appointment of a guardian or receiver for the principal**. Absent an order of the probate court or superior court having jurisdiction directing a guardian of the person to exercise the **powers** of the principal under a **health care** agency that survives disability, incapacity, or incompetency, the guardian of the person has no **power**, duty, or liability with respect to any **health care** matters covered by the agency; provided, however, that no order usurping the authority of an agent known to the proposed guardian shall be entered unless there is notice to said agent by first class mail to the agent's last known address and it is shown by clear and convincing evidence that the agent is acting in a manner inconsistent with the **power** of **attorney**. (d) A health care agency may be amended at any time by a written amendment executed in accordance with the provisions of subsection (a) of Code Section 31-36-5.	DPOAHC may be revoked regardless of mental or physical condition. DPOAHC not revoked by appointment of guardian.

	(e) Any person, other than the agent, to whom a revocation or amendment of a health care agency is communicated or delivered shall make all reasonable efforts to inform the agent of that fact as promptly as possible.	
31-36-7	Each health care provider and each other person with whom an agent deals under a health care agency shall be subject to the following duties and responsibilities: (1) It is the responsibility of the agent or patient to notify the health care provider of the existence of the health care agency and any amendment or revocation thereof. A health care provider furnished with a copy of a health care agency shall make it a part of the patient's medical records and shall enter in the records any change in or termination of the health care agency by the principal that becomes known to the provider. Whenever a provider believes a patient is unable to understand the general nature of the health care procedure which the provider deems necessary, the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency; (2) A health care decision made by an agent in accordance with the terms of a health care agency shall be complied with by every health care provider to whom the decision is communicated, subject to the provider's right to administer treatment for the patient's comfort or alleviation of pain; but, if the provider is unwilling to comply with the agent's decision, the provider shall promptly inform the agent who shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. A provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the pending transfer; (3) At the patient's expense and subject to reasonable rules of the health care provider to prevent disruption of the patient's health care, each health care provider shall give an agent authorized to receive such information under a health care agency the same right the principal has to examine and copy any part or all of the patient's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home, or other health care provider, notwithstanding the provisions of any statute or rule of law to the contrary; and (4) If and to the extent a health care agency empowers the agent to: (A) Make an anatomical gift on behalf of the principal under Article 6 of Chapter 5 of Title 44, the "Georgia Anatomical Gift Act," as now or hereafter amended; (B) Authorize an autopsy of the principal's body; or	

	(C) Direct the disposition of the principal's remains, the anatomical gift, autopsy approval, or remains disposition shall be deemed the act of the principal or of the person who has priority under law to make the necessary decisions and each person to whom a direction by the agent in accordance with the terms of the agency is communicated shall comply with such direction to the extent it is in accord with reasonable medical standards or other relevant standards at the time of reference.	
31-36-8	Each health care provider and each other person who acts in good faith reliance on any direction or decision by the agent that is not clearly contrary to the terms of a health care agency will be protected and released to the same extent as though such person had dealt directly with the principal as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of the agent and each such health care provider and other person acting in good faith reliance on such direction or decision: (1) No such provider or person shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct solely for complying with any direction or decision by the agent, even if death or injury to the patient ensues; (2) No such provider or person shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with any direction or decision by the agent, as long as such provider or person promptly informs the agent of such provider's or person's refusal or failure to comply with such direction or decision by the agent. The agent shall then be responsible to make the necessary arrangements for the transfer of the patient to another health care provider. A health care provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the pending transfer; (3) If the actions of a health care provider or person who fails to comply with any direction or decision by the agent are substantially in accord with reasonable medical standards at the time of reference and the provider cooperates in the transfer of the patient pursuant to paragraph (2) of Code Section 31-36-7, the health care provider or person shall not be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to comply with the agency; (4) **No agent who, in good faith, acts with due care for the benefit of the patient and in accordance with the terms of a health care agency, or who fails to act, shall be subject to any type of civil or criminal liability for such action or inaction**; (5) If the authority granted by a health care agency is revoked under Code	

	Section 31-36-6, a person will not be subject to criminal prosecution or civil liability for acting in good faith reliance upon such health care agency unless such person had actual knowledge of the revocation; and (6) If the patient's death results from withholding or withdrawing life-sustaining or death-delaying treatment in accordance with the terms of a health care agency, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law and shall not impair or invalidate any insurance, annuity, or other type of contract that is conditioned on the life or death of the patient, any term of the contract to the contrary notwithstanding.	
31-36-9	All persons shall be subject to the following sanctions in relation to health care agencies, in addition to all other sanctions applicable under any other law or rule of professional conduct: (1) Any person shall be civilly liable who, without the principal's consent, willfully conceals, cancels, or alters a health care agency or any amendment or revocation of the agency or who falsifies or forges a health care agency, amendment, or revocation; (2) A person who falsifies or forges a health care agency or willfully conceals or withholds personal knowledge of an amendment or revocation of a health care agency with the intent to cause a withholding or withdrawal of life-sustaining or death-delaying procedures contrary to the intent of the principal and thereby, because of such act, directly causes life-sustaining or death-delaying procedures to be withheld or withdrawn, shall be subject to prosecution for criminal homicide as provided for in Chapter 5 of Title 16; and (3) Any person who requires or prevents execution of a health care agency as a condition of ensuring or providing any type of health care services to the patient shall be civilly liable and guilty of a misdemeanor and shall be punished as provided by law.	Criminal and civil sanctions for improper action relating to DPOAHC
31-36-10	(a) The statutory **health care power** of **attorney** form contained in this subsection may be used to grant an agent **powers** with respect to the principal's own **health care**; but **the statutory health care power is not intended to be exclusive** or to cover delegation of a parent's **power** to control the **health care** of a minor child, and no provision of this chapter shall be construed to bar use by the principal of any other or different form of **power** of **attorney** for **health care** that complies with Code Section 31-36-5. If a different form of **power** of **attorney** for **health care** is used, it may contain any or all of the provisions set forth or referred to in the following form. When a power of attorney in substantially the following form is used, and notice substantially similar to that contained in the form below has been provided to the patient, it shall have the same meaning and effect	Statutory form; not exclusive. The statutory form is available at: http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=31-36-10.

	as prescribed in this chapter. Substantially similar forms may include forms from other states. The statutory **health care power** may be included in or combined with any other form of **power** of **attorney** governing property or other matters: **(statutory form)**	
31-36-11	This chapter applies to all health care providers and other persons in relation to all health care agencies executed on and after July 1, 1990. This chapter supersedes all other provisions of law or parts thereof existing on July 1, 1990, to the extent such other provisions are inconsistent with the terms and operation of this chapter, provided that this chapter does not affect the provisions of law governing emergency health care. If the principal has a living will under Chapter 32 of this title, as now or hereafter amended, **the living will shall not be operative so long as an agent is available who is authorized by a health care agency to deal with the subject of life-sustaining or death-delaying procedures for and on behalf of the principal**. Furthermore, **unless the health care agency provides otherwise, the agent who is known to the health care provider to be available and willing to make health care decisions for the patient has priority over any other person, including any guardian of the person, to act for the patient in all matters covered by the health care agency**.	Living Will not effective while DPOAHC is effective. In making decisions, agent with DPOAHC has priority over any other person in making decisions.
31-36-12	This chapter does not in any way affect or invalidate any health care agency executed or any act of an agent prior to July 1, 1990, or affect any claim, right, or remedy that accrued prior to July 1, 1990.	
31-36-13	This chapter is wholly independent of the provisions of Title 53, relating to wills, trusts, and the administration of estates, and nothing in this chapter shall be construed to affect in any way the provisions of said Title 53.	
31-36A-5	An attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, after having personally examined an adult, may certify in the adult's medical records the following: (1) The adult is unable to consent for himself or herself; and (2) It is the physician's belief that it is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition and to be transferred to or admitted to an alternative facility or placement, including, but not limited to, nursing facilities, personal care homes, rehabilitation facilities, and home and community based programs.	Physician may certify patient unable to make decisions.
31-36A-6(a)	(a) Upon a physician's certification pursuant to Code Section 31-36A-5, and in addition to such other persons as may be otherwise authorized and empowered, any one of the following persons is authorized and empowered	Persons with statutory power to make health care decisions upon physician certification of incapacity.

	to consent, in the priority order listed below, either orally or otherwise, to such transfer, admission, or discharge: (1) Any adult, for himself or herself; (2) Any person authorized to give such consent for the adult under a **health care** agency complying with Chapter 36 of this title, the "Durable **Power** of **Attorney** for **Health Care** Act"; (3) Any guardian of the person for his or her ward; (4) Any spouse for his or her spouse; (5) Any adult child for such person's parent; (6) Any parent for such person's adult child; (7) Any adult for such person's adult brother or sister; (8) Any grandparent for such person's adult grandchild; (9) Any adult grandchild for such person's grandparent; (10) Any adult uncle or aunt for such person's adult nephew or niece; or (11) Any adult nephew or niece for such person's adult uncle or aunt.	Note: patient comes before agent. Many people misunderstand POA.
31-36A-6(b)	(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to a transfer, admission, or discharge which the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered or, if the patient's preferences are unknown, which such person believes the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered. The current health care facility's discharge planner, social worker, or other designated personnel shall assist the person authorized to consent under subsection (a) of this Code section with identifying the most appropriate, least restrictive level of care available, including home and community based services and available placements, if any, in reasonable proximity to the patient's residence.	
31-36A-6(c)	(c) The authorization to consent to such transfer, admission, or discharge shall expire upon the earliest of the following: (1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with applications for financial coverage and insurance benefits for health or personal care; (2) Upon a physician's certification that the adult is able to consent to decisions regarding his or her placements for health or personal care; or (3) Upon discovery that another person authorized under subsection (a) of this Code section of a higher priority is available who has not affirmatively waived his or her authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health	Conditions terminating statutory power make it a poor substitute for a DPOAHC.

	care facility or placement, provided that dissent by such authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.	
31-36A-6(d) to (f)	(d) The authorization to give consent for transfer, admission, or discharge is limited solely to said transfer, admission, or discharge decision and responsibilities associated with such decision, including providing assistance with financial assistance applications. It does not include the power or authority to perform any other acts on behalf of the adult not expressly authorized in this Code section. (e) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, the adult retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge. (f) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct.	These limitations demonstrate why it is better to plan ahead and have a Health Care Power of Attorney in place.
31-39-1	The General Assembly finds that although cardiopulmonary resuscitation has proved invaluable in the reversal of sudden, unexpected death, it is appropriate for an attending physician, in certain circumstances, to issue an order not to attempt cardiopulmonary resuscitation of a patient where appropriate consent or authorization has been obtained. The General Assembly further finds that there is a need to establish and clarify the rights and obligations of patients, their families or representatives, and health care providers regarding cardiopulmonary resuscitation and the issuance of orders not to resuscitate. The General Assembly further finds that, in the interest of protecting individual autonomy, cardiopulmonary resuscitation in some circumstances may cause loss of patient dignity and unnecessary pain and suffering. In recognition of the considerable uncertainty in the medical and legal professions as to the legality of implementing orders not to resuscitate, in recognition of the request of the Supreme Court of Georgia for legislative guidance in this area, and in recognition of the dignity and privacy which patients have a right to expect, the General Assembly declares that the laws of the State of Georgia shall recognize the right of patients or other authorized persons to instruct physicians and other health care personnel to refrain from cardiopulmonary resuscitation.	DNRs; legislative findings.
31-39-2	As used in this chapter, the term: (1) "Adult" means any person who is 18 years of age or older, is the parent of a child, or has married.	

	(2) "Attending physician" means the physician selected by or assigned to a patient to have primary responsibility for the treatment and care of the patient. Where more than one physician share such responsibility, any such physician may act as the attending physician pursuant to this chapter. (3) "**Authorized person**" means any one person from the following list in the order of priority as listed below: (A) Any agent appointed pursuant to Chapter 36 of this title, the "Durable **Power** of **Attorney** for **Health Care** Act"; (B) A spouse; (C) **A guardian over the person appointed pursuant to the provisions of Code Section 29-5-1**; (D) A son or daughter 18 years of age or older; (E) A parent; or (F) A brother or sister 18 years of age or older. (4) **"Candidate for nonresuscitation" means a patient who, based on a determination to a reasonable degree of medical certainty by an attending physician with the concurrence of another physician:** **(A) Has a medical condition which can reasonably be expected to result in the imminent death of the patient;** **(B) Is in a noncognitive state with no reasonable possibility of regaining cognitive functions; or** **(C) Is a person for whom cardiopulmonary resuscitation would be medically futile in that such resuscitation will likely be unsuccessful in restoring cardiac and respiratory function or will only restore cardiac and respiratory function for a brief period of time so that the patient will likely experience repeated need for cardiopulmonary resuscitation over a short period of time or that such resuscitation would be otherwise medically futile.** (5) "Cardiopulmonary resuscitation" means only those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest. (6) "**Decision-making capacity**" means the ability to understand and appreciate the nature and consequences of an order not to resuscitate, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order. (6.1) "Emergency medical technician" means a person certified as an emergency medical technician, paramedic, or cardiac technician under Chapter 11 of this title. (7) "Health care facility" means an institution which is licensed as a hospital or nursing home pursuant to Article 1 of Chapter 7 of this title or licensed as	

	a hospice pursuant to Article 9 of Chapter 7 of this title, or a home health agency licensed pursuant to Article 7 of Chapter 7 of this title. (8) "Minor" means any person who is not an adult. (9) "Order not to resuscitate" means an order not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest, or both. (10) "Parent" means a parent who has custody of a minor or is the parent of an adult without decision-making capacity. (11) "Patient" means a person who is receiving care and treatment from an attending physician. (12) "Reasonably available" means that a person to be contacted can be contacted with diligent efforts by an attending physician, another person acting on behalf of the attending physician, or the health care facility within a reasonable period of time as determined by the attending physician	
31-39-3	(a) **Every patient shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless there is consent or authorization for the issuance of an order not to resuscitate**. Such presumption of consent does not presume that every patient shall be administered cardiopulmonary resuscitation, but rather that every patient agrees to its administration unless it is medically futile. (b) Every adult shall be presumed to have the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise in writing in the patient´s medical record pursuant to this Code section or pursuant to a court order. **When an order not to resuscitate is requested by an adult with decision-making capacity, such order shall be presumed, unless revoked pursuant to Code Section 31-39-6, to be the direction of such person regarding resuscitation**. (c) Nothing in this chapter shall require a health care facility, any other facility, or a health care provider to expand its existing equipment and facilities to provide cardiopulmonary resuscitation.	In the absence of a DNR order, the presumption is that the patient would want to be revived.
31-39-4	(a) It shall be lawful for the attending physician to issue an order not to resuscitate pursuant to the requirements of this chapter. Any written order issued by the attending physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'no code,' or substantially similar language in the patient´s chart shall constitute a legally sufficient order and shall authorize a physician, health care professional, or emergency medical technician to withhold or withdraw **cardiopulmonary resuscitation**. Such an order shall remain effective, whether or not the patient is receiving treatment from or is a resident of a health care facility, until the order is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked	"Authorized person" includes a guardian." Edwards v. Shumate, 468 S.E.2d 23 (Ga.,1996). *See* OCGA 31-39-2(3)(C).

	as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order. (b) **An adult person with decision-making capacity may consent orally or in writing to an order not to resuscitate and its implementation at a present or future date, regardless of that person´s mental or physical condition on such future date. If the attending physician determines at any time that an order not to resuscitate issued at the request of the patient is no longer appropriate because the patient´s medical condition has improved, the physician shall immediately notify the patient**. (c) The appropriate authorized person may, after being informed of the provisions of this Code section, consent orally or in writing to an order not to resuscitate for an adult candidate for nonresuscitation; provided, however, that such consent is based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered. (d) Any parent may consent orally or in writing to an order not to resuscitate for his or her minor child when such child is a candidate for nonresuscitation. If in the opinion of the attending physician the minor is of sufficient maturity to understand the nature and effect of an order not to resuscitate, then no such order shall be valid without the assent of such minor. (e) If none of the persons specified in subsections (b), (c), and (d) of this Code section is reasonably available or competent to make a decision regarding an order not to resuscitate, an attending physician may issue an order not to resuscitate for a patient, provided that: (1) Such physician determines with the concurrence of a second physician, in writing in the patient´s medical record, that such patient is a candidate for nonresuscitation; (2) An ethics committee or similar panel, as designated by the health care facility, concurs in the opinion of the attending physician and the concurring physician that the patient is a candidate for nonresuscitation; and (3) The patient is receiving inpatient or outpatient treatment from or is a resident of a health care facility other than a hospice or a home health agency.	
31-39-5	(a) An attending physician for whose patient an order not to resuscitate has been issued pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 shall examine that patient at such intervals as determined periodically by the	

	physician to determine whether the patient still qualifies as a candidate for nonresuscitation, unless that order has been canceled or consent thereto revoked as provided in this chapter. That physician shall record such determination in the patient´s medical chart. Failure to comply with this subsection shall not invalidate that order. (b) If the order not to resuscitate was entered pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 and the attending physician who issued the order or, if that attending physician is unavailable, another attending physician, at any time determines that the patient no longer qualifies as a candidate for nonresuscitation, the attending physician or the physician´s designee shall immediately include such determination in the patient´s chart, cancel the order, and notify the patient, the person who consented to the order, and all health care facility staff responsible for the patient´s care of the cancellation. (c) If an order not to resuscitate was entered pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 and the patient at any time regains decision-making capacity, the attending physician who issued the order or, if that attending physician is unavailable, another attending physician, shall immediately determine if the patient consents to the order not to resuscitate and, if the patient does not so consent, the attending physician or the physician´s designee shall cancel the order by an appropriate entry on the record and notify all health care facility staff responsible for the patient´s care of the cancellation.	
31-39-6	(a) A patient may, at any time, revoke his or her consent to an order not to resuscitate by making either a written or an oral declaration or by any other act evidencing a specific intent to revoke such consent which is communicated to or in the presence of an attending physician or a member of the nursing staff at the health care facility, a health care professional, or an emergency medical technician. (b) Any parent or authorized person may at any time revoke his or her consent to an order not to resuscitate a patient by making either a written or an oral declaration or by any other act evidencing a specific intent to revoke such consent which is communicated to or in the presence of an attending physician or a member of the nursing staff at the health care facility, a health care professional, or an emergency medical technician. (c) Any physician who is informed of or provided with a revocation of consent pursuant to this Code section shall, either by himself or herself or by designee, immediately include the revocation in the patient´s chart, cancel the order, and notify any health care facility staff responsible for the patient´s care of the revocation and cancellation. Any member of the nursing staff, a health care professional, or emergency medical technician who is	Patient or agent may revoke DNR.

	informed of or provided with a revocation of consent pursuant to this Code section shall immediately notify a physician of such revocation.	
31-39-6.1	(a) In addition to those orders not to resuscitate authorized elsewhere in this chapter, any physician, health care professional, or emergency medical technician shall be authorized to effectuate an order not to resuscitate for a person who is not a patient in a hospital, nursing home, or licensed hospice and the order is evidenced in writing containing the patient´s name, date of the form, printed name of the attending physician, and signed by the attending physician on a form substantially similar to the following: **(statutory form)**	Statutory form. The statutory form is available at: http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=31-39-6.1
31-39-9	(a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of cardiopulmonary resuscitation in any lawful manner or affect the validity of orders not to resuscitate issued and implemented under other circumstances. In such respect, the provisions of this chapter are cumulative. (b) Nothing in this chapter shall be construed to preclude a court of competent jurisdiction from approving the issuance of an order not to resuscitate under circumstances other than those under which such an order may be issued pursuant to this chapter.	
37-3-166	(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except: (1) When the chief medical officer of the facility where the record is kept deems it essential for continued treatment, a copy of the record or parts thereof may be released to physicians or psychologists when and as necessary for the treatment of the patient; (2) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court; (2.1) A copy of the record of a deceased patient or deceased former patient may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state; (3) When a patient is admitted to a facility, a copy of the record or information	Confidentiality of mental health records

	contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the service plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner; (4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient; (5) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release; (6) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient's psychologist; (7) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter; (8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state; (8.1) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state; (9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a patient in a state facility, as well as the patient's current address, if known; and (10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator. (b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-9-21, 24-9-40, or 43-39-16. (c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character	

	thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-9-21, 24-9-40, or 43-39-16. (d) When a sheriff transports an adult involuntary patient to a facility, that sheriff may request in writing that a notice of such patient's discharge be given to the sheriff; and such notice shall be provided if such patient or the patient's guardian consents in writing to the disclosure or if, in its discretion, the court ordering the involuntary treatment provides for such notice in the order issued pursuant to Code Section 37-3-81.1.	

1. Patient Self Determination Act. The federal Patient Self Determination Act is covered in T. Takacs, *Elder Law Practice in Tennessee, supra*, § 11-1(d). Essentially, the Act requires that health care providers "maintain **written policies and procedures** with respect to all adult individuals receiving medical care by or through the provider … **concerning** - (i) an individual's **rights under State law** (whether statutory or as recognized by the courts of the State) **to make decisions concerning such medical care**, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and (ii) the written policies of the provider or organization respecting the implementation of such rights" 42 U.S.C. § 1395cc(f)(1) (Emphasis added). The resident's medical record must note whether an advanced directive is in place. 42 U.S.C. § 1395cc(f)(1)(B). Care cannot be conditioned on execution of an advanced directive. 42 U.S.C. § 1395cc(f)(1)(C).[1] The facility must provide the information regarding its policy at the time of admission to the nursing home. 42 U.S.C. § 1395cc(f)(2)(B).

2. **Cruzan by Cruzan v. Director, Missouri Dept. of Health,** 110 S.Ct. 2841 (U.S. 1990). Guardians of patient in persistent vegetative state brought declaratory judgment action seeking judicial sanction of their wish to terminate artificial hydration and nutrition for patient. The Supreme Court, Chief Justice Rehnquist, held that: (1) the United States Constitution did not forbid Missouri from requiring that **clear and convincing evidence of an incompetent's wishes** to the withdrawal of life-sustaining treatment; (2) state Supreme Court did not commit constitutional error in concluding that evidence adduced at trial did not amount to clear and convincing **evidence of patient's desire** to cease hydration and nutrition; and (3) **due process did not require state to accept substituted judgment of close family members absent substantial proof that their views reflected those of patient**.

[1] Occasionally, nursing homes violate this statute by requiring execution of an advanced directive at the time of admission.

3. HIPAA. It is now common to hear that health care providers will not provide protected health information to persons other than the resident and the resident's agent under a valid health care power of attorney. That, however, frustrates self determination since it is impossible to give informed consent without knowledge of the resident's condition. HIPAA, the Health Insurance Portability and Accountability Act of 1996, is not so limited and such refusals violate both the spirit and intent of the statute. HIPAA expressly allows (but does not require) health care providers to share information with family. *See* 45 C.F.R. § 164.510(b)(1)(i). Nonetheless, it may be wise to avoid the argument by providing family members who will visit Mom with a HIPAA compliant release. This will not allow family members, other than the agent under a HCPOA to make medical decisions, but it will allow them to "check up" on Mom. For information regarding HIPAA related communication issues, *see* D. McGuffey, *How to eat a HIPAA: Medical Records and the Elder Law Attorney*, NAELA e-Bulletin, October 7, 2003.

4. Summary of Georgia Health Privacy Laws. *See* http://www.healthprivacy.org/usr_doc/GA2002.pdf.

5. Additional Resources. *See* C. Krohm and S. Summers, Advanced Health Care Directives (ABA 2002); Last Acts website at: http://www.lastacts.org.

This document is not intended as a substitute for legal advice. You should not rely on it since no document can take into account the individual circumstances you may face. If you are interested in preparing an advanced directive for yourself, you should consult with an Elder Law Attorney or with another attorney familiar with advanced directives. You may locate Elder Law Attorneys throughout the United States at www.naela.org.