**Psychiatric Advance Directives and Health Care Powers of Attorney**

G.S. 122C-71, et seq.; G.S. 32A-15, et seq.

**Some Guiding Principles**

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1. A Psychiatric Advance Directive or PAD (also called an Advance Instruction for Mental Health Treatment) gives an individual the ability to anticipate future mental health treatment needs and to put in writing helpful information and instructions for treatment providers in the event that the individual, due to the nature of an anticipated mental healthcare event, loses the mental capacity to make and communicate treatment decisions.
2. A PAD may be used by the individual (called the principal) to provide advanced consent to treatment that is offered to the individual at a future time when the individual, due to a psychiatric crisis, lacks the capacity to give informed consent to treatment.
3. A Health Care Power of Attorney or HCPA may be used to name a substitute or surrogate decision maker, someone the principal trusts, to make treatment decisions on behalf of the principal if the principal, at some point in the future, loses the mental capacity to consent to treatment (becomes “incapable”).
4. An HCPA may address physical or mental health treatment, and the surrogate decision maker’s (health care agent’s) authority to make decisions on behalf of the principal is broad unless the principal writes limitations on this authority into the HCPA. An HCPA may include guidance or directions to the health care agent regarding the principal’s health care.
5. A PAD may be executed without executing an HCPA. An HCPA may be executed without executing a PAD. Or, an HCPA may incorporate or be combined with a PAD. They are separate documents that stand alone from each other, except that if both are executed, then the health care agent’s mental health treatment decisions made on behalf of the principal must be consistent with any instructions in the PAD. If no PAD exists, then the health care agent’s decisions shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack capacity to make or communicate health care decisions.
6. A mental health treatment provider or attending physician who is presented with a PAD or HCPA must make the PAD, HCPA, or both, a part of the principal’s medical record.
7. With a few exceptions, an attending physician or mental health treatment provider must act in accordance with the instructions in a PAD, or the instructions of a health care agent named in an HCPA, when the principal, in the opinion of a physician or psychologist, is determined to be incapable.
8. Once the principal regains capacity and is no longer “incapable,” the principal regains the authority to make treatment decisions on his or her own, unless the principal is adjudicated incompetent and a guardian has been appointed to make treatment decisions.
9. An individual making a PAD may grant or withhold consent to treatment, including the use of medication, electroconvulsive treatment, and admission to an inpatient facility for mental illness. An individual who is incapable of giving consent to treatment may be admitted to an inpatient facility based on the individual’s prior written consent in the PAD.
10. When an HCPA authorizes a health care agent to make mental health treatment decisions for a person who is incapable, the health care agent must act for the individual in applying for admission and consenting to treatment at an inpatient facility, consistent with any limitations expressed by the principal in the HCPA or, if one exists, PAD.