

## Health Care Power of Attorney (SC)

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A Standard Document allowing an individual residing in South Carolina to authorize an agent, known as a health care agent, to make health care decisions and receive health care information on the individual's behalf. The document may include instructions regarding particular health care treatments, including directives regarding life-sustaining treatments or end-of-life care. This Standard Document contains integrated notes and drafting tips.

### DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

A health care power of attorney allows a competent adult individual residing in South Carolina to appoint a third party to make health care decisions or receive health care information on the individual's behalf if the individual becomes incapacitated (S.C. Code Ann. §§ 62-5-500 to 62-5-518). A health care power of attorney must be substantially in the form provided by South Carolina law (S.C. Code Ann. § 62-5-504).

This Standard Document refers to:

- The individual making the health care power of attorney as the principal.
- The appointed third party as the agent.

(S.C. Code Ann. § 62-5-501(1), (9).)

This Standard Document follows the statutory rules for drafting a health care power of attorney, choosing an agent, and executing the power of attorney (S.C. Code Ann. §§ 62-5-503 and 62-5-504).

### Capacity to Execute Health Care Power of Attorney

To execute a valid health care power of attorney, the principal must both:

- Be 18 years old or older.
- Have the requisite mental capacity to execute the document (that is, be of sound mind).

(S.C. Code Ann. §§ 62-5-501(9) and 62-5-503.)

Mental incompetence for executing a health care power of attorney is usually determined under the standards and procedures for the inability to consent under the Adult Health Care Consent Act (S.C. Code Ann. §§ 44-66-10 to 44-66-80 and 62-5-502(d)). To be considered unable to consent, a person must be unable to either:

- Appreciate the nature and implications of the person's condition and proposed health care.
- Make a reasoned decision concerning the proposed health care.
- Communicate that decision in an unambiguous manner.

(S.C. Code Ann. § 44-66-20(8).)

When a principal suffers from mental illness or defect, including dementia or Alzheimer's disease, at the time a health care power of attorney is signed, counsel should take extra care to document the principal's mental state at that time.

### Health Care Power of Attorney Effective Only on Incapacity

The principal retains control over the principal's own health care decisions until the principal's attending physician determines that the principal no longer has the capacity to make those decisions, and that the incapacity is permanent or of extended duration. If the incapacity is not permanent or of an extended duration, two physicians (or one physician and the agent) must certify incapacity. It is only after this determination that the designated agent has authority to speak

for the principal. (S.C. Code Ann. §§ 44-66-20(8), 44-66-30(A), and 62-5-502(d).)

### Bracketed Language

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or phrases indicates that the drafting party should include one of the words or phrases contained in the brackets.

#### INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.
2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.
3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.
4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.
5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.
6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.
- B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

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C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. A PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OF AGE OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

### DRAFTING NOTE: INFORMATION ABOUT THIS DOCUMENT

Since a health care power of attorney must be substantially in the form provided by South Carolina law, it must include the statutory information in the “Information About this Document” section of the statutory form (S.C. Code Ann. § 62-5-504).

This language generally instructs the principal on important information related to:

- How to create the health care power of attorney.
- How the health care power of attorney works.
- Information that should be included in the health care power of attorney.
- Executing the health care power of attorney, including who may act as witnesses.

- The principal’s right to revoke the health care power of attorney.

Counsel should review the information in this section with the principal before the principal executes the health care power of attorney. The principal should understand the role of the agent and discuss this document with the prospective agent.

If the principal is in a health care or nursing facility, the principal should make sure the completed and executed health care power of attorney is part of the principal’s medical record.

## HEALTH CARE POWER OF ATTORNEY

### (S.C. Statutory Form)

#### 1. DESIGNATION OF HEALTH CARE AGENT

I, [PRINCIPAL NAME] [(AKA, [ALIAS])], hereby appoint:

### DRAFTING NOTE: IDENTIFYING THE PRINCIPAL

The principal is the person creating the health care power of attorney and appointing an agent (S.C. Code Ann. § 62-5-501(9)). If the principal has any known aliases, including the occasional use of a maiden or married name, counsel should include these within the parentheses after the

name of the principal. If not, counsel should delete the second bracket containing the option for an alias designation.

Counsel should fill in all bracketed items here and throughout the health care power of attorney.

Name: [AGENT NAME]

Address: [ADDRESS]

Phone: [PHONE NUMBER]

as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, [I name the following as successor to be my agent/I name the following as successors to my agent, each to act alone and successively, in the order named]:

A. First Alternate Agent:

Name: [ALTERNATE AGENT NAME]

Address: [ADDRESS]

Phone: [PHONE NUMBER]

B. Second Alternate Agent:

Name: [SECOND ALTERNATE AGENT NAME]

Address: [ADDRESS]

Phone: [PHONE NUMBER]

to make health care decisions for me as authorized in this document.

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

### DRAFTING NOTE: DESIGNATING A HEALTH CARE AGENT

The principal must identify an agent in this section. The principal should carefully choose a trusted person to serve as the agent. The best choice for agent is someone who:

- Knows the principal well
- Respects the principal's objectives and values.

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- Ideally lives near the principal.
- Agrees to act as agent.

Counsel should recommend that the individual discuss this role with the potential agent before executing the health care power of attorney.

The principal should confirm whether the nominated agent is:

- 18 years of age or older and of sound mind (S.C. Code Ann. § 62-5-503(a)(4)).
- Available if the principal cannot make health care decisions.
- Willing to act according to the principal's wishes.
- Able to handle potential family conflicts regarding the principal's wishes.

The agent cannot be either:

- A doctor or other health care provider, or an employee of a health care provider, with whom the principal has a provider-patient relationship when the principal executes the health care power of attorney.
- A spouse of the doctor or health care provider or employee.

However, this restriction does not apply if the health care provider, employee, or spouse is a

relative of the principal. (S.C. Code Ann. § 62-5-503(a)(4).)

The principal should also nominate alternate (successor) agents willing to serve if the primary agent is unavailable or cannot make health care decisions for the principal (S.C. Code Ann. § 62-5-511). If the principal does not want to name an alternate agent, or more than one alternate agent, the principal may strike through those sections of the statutory form or write "N/A" to indicate the principal intentionally declined to name alternate agents.

### Co-Agents

Although the language of the statute allowing the principal to appoint an agent refers to a singular agent, there is nothing in South Carolina law that prevents naming co-agents to act together (S.C. Code Ann. § 62-5-501(1)). If the principal appoints co-agents, the power of attorney must address what occurs if the co-agents cannot agree on a health care decision.

Co-agents are generally not recommended as any disagreement or agent unavailability may delay health care decisions. Health care providers generally want to look to one person with authority for making health care decisions.

## 2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.

## 3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s), if then acting as health care agent, named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Information Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d and 45 C.F.R. Parts 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

### DRAFTING NOTE: EFFECTIVE DATE AND DURABILITY

An agent may make health care decisions for the principal when the principal is certified to be incapable of making health care decisions. This authority continues during any period of incapacity (the power of attorney is durable) until the principal either:

- Is certified to have regained capacity.
- Is deceased.
- The power of attorney for health care terminates.

(S.C. Code Ann. § 62-5-502(d) and see Drafting Notes, Health Care Power of Attorney Effective Only on Incapacity and Administrative Provisions (Revocation of Power of Attorney)).

### HIPAA Authorization

Under the terms of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d and 45 C.F.R. §§ 160.101 to 164.534), an agent appointed in a health care power of attorney is the individual's personal

representative for HIPAA purposes and may receive protected health care information even without a specific authorization (S.C. Code Ann. § 62-5-505(1) and 45 C.F.R. § 164.502(g)).

This form contains a HIPAA release to confirm to the health care provider, doctor, pharmacist, or other medical professional that they are authorized to release medical records to the health care agent. This section is not strictly necessary as it merely restates the law but may be included to avoid delay or confusion. For more information regarding HIPAA, see [Practice Note, Understanding HIPAA Releases](#).

### Individual Authorization

Though not part of the health care power of attorney form, the health care provider or provider's agent must provide the principal an opportunity to designate a family member or other individual as a person with whom the provider may discuss the patient's medical condition and treatment plan (S.C. Code Ann. § 44-66-75).

#### 4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

- A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.
- B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.
- C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.

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D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

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### DRAFTING NOTE: AGENT'S POWERS

A health care power of attorney authorizes the agent to make almost all health care decisions for the principal on the principal's incapacity, unless the principal includes express directions or restrictions in Section 4E (S.C. Code Ann. § 62-5-504). Absent these express limitations, the agent is to consider in good faith the principal's wishes and preferences when making health care decisions. If the agent does not know the principal's wishes and preferences and cannot

reasonably determine them, then the agent must act in good faith. (S.C. Code Ann. § 62-5-510(c).)

One exception to this rule is that where the principal does not initial any of the statements in Section 8, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withdrawn (S.C. Code Ann. § 62-5-504 and see Drafting Note, Statement of Desires Regarding Tube Feeding).

### 5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may \_\_\_\_\_; may not \_\_\_\_\_ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

### DRAFTING NOTE: ORGAN DONATION

The health care power of attorney is one of several documents a principal may use to express a desire to make an anatomical gift. Other documents a competent principal may use to make an anatomical gift include:

- A properly executed organ donor card or other record signed by the donor or other person making the gift.
- A driver's license or identification card authorization to make an anatomical gift.

- Registration with the South Carolina Donor registry.
- A will.

(S.C. Code Ann. § 44-43-320 and see [Donate Life South Carolina](#).)

The principal may also make an anatomical gift during a terminal illness or injury of the donor, by any form of oral or written communication addressed to at least two adults, at least one

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of whom is a disinterested witness (S.C. Code Ann. § 44-43-320(A)(3)).

An anatomical gift becomes effective on the donor's death (S.C. Code Ann. §§ 44-43-305(3)

and 44-43-320(D)). If the principal sets out directions regarding anatomical gifts in more than one document, counsel should advise the principal to make all anatomical gift documents consistent to avoid confusion.

### 6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

#### **DRAFTING NOTE: EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)**

This section provides that a valid Living Will, also known as a Declaration of a Desire for a Natural Death or an Advanced Directive, overrides elections made in the Health Care Power of Attorney in any situation where the Living Will is applicable (end-of-life health care decision-making) (S.C. Code Ann. § 62-5-504).

A principal can prepare a living will separately from a health care power of attorney. However, in South Carolina it is common for counsel to prepare them in one document when creating a living will and health care power of attorney for estate planning purposes.

### 7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

A. \_\_\_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

B. \_\_\_\_\_ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

1. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or
2. if I am in a state of permanent unconsciousness.

OR

C. \_\_\_\_\_ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.



### DRAFTING NOTE: STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT

The provision includes three options that a principal may make regarding life-sustaining treatment. The principal may only choose one option.

The first option provides that the principal grants discretion to the agent, in which case the agent is to balance the burdens of treatment with the expected benefits. The second option provides that the principal directs the agent to withhold or withdraw treatment if the principal either:

- Has a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time.

- Is in a state of permanent unconsciousness.

The third option provides that the principal directs the agent to authorize maximum life-prolonging treatment without regard to the principal's condition, the chances of recovery, or the cost of the procedures. The principal should initial the desired option. (S.C. Code Ann. § 62-5-504.)

Life-sustaining procedures are not withheld or withdrawn under a health care power of attorney during a principal's pregnancy. However, the agent's authority to make decisions concerning the principal's obstetrical and other health care during a pregnancy is not otherwise affected. (S.C. Code Ann. § 62-5-507.)

#### 8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7:

(INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS):

A. \_\_\_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

B. \_\_\_\_\_ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

C. \_\_\_\_\_ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

### DRAFTING NOTE: STATEMENT OF DESIRES REGARDING TUBE FEEDING

The principal can indicate specific preferences regarding the administration and withdrawal of artificial nutrition and hydration here. This is optional, and the health care power of attorney is still valid without the principal expressing preferences here. The principal also may outline these preferences in a separate living will.

If the principal chooses to select an option in this section:

- The first option provides that the principal grants discretion to the agent, in which case the agent is to balance the burdens of providing artificial nutrition and hydration with the expected benefits.

- The second option provides that the principal directs the agent to withhold or withdraw artificial nutrition and hydration.
- The third option provides that the principal directs the agent to authorize artificial nutrition and hydration within the standards of accepted medical practice regardless of the principal's condition, chances for recovery, or cost.

If the principal does not initial the first or second option (or makes no selection at all), the agent has no authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withdrawn. (S.C. Code Ann. § 62-5-504.)

## 9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

### DRAFTING NOTE: ADMINISTRATIVE PROVISIONS (REVOCATION OF POWER OF ATTORNEY)

Counsel should advise the principal that the health care power of attorney generally is considered valid and in effect indefinitely unless the principal revokes it (S.C. Code Ann. § 62-5-512). The principal, if competent, can revoke the health care power of attorney by notifying the agent or a health care provider by:

- Any writing, oral statement, or other act notifying the agent or health care provider of the principal's intent to revoke.
- The principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable

power of attorney, if the durable power of attorney:

- states an intention that the health care power of attorney be revoked; or
- is inconsistent with the health care power of attorney.

(S.C. Code Ann. § 62-5-512.)

The revocation language included in this document expressly revokes any prior health care powers of attorney, so that there is no issue that this health care power of attorney supersedes previous ones the principal executed, if any.

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### SIGNATURE OF PRINCIPAL

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this [DAY] day of [MONTH], [YEAR].

My current home address is:

[PRINCIPAL ADDRESS]

-----  
[PRINCIPAL NAME], Principal

### WITNESS STATEMENT

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health care facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: [FIRST WITNESS NAME]

Telephone: [TELEPHONE]

Address: [ADDRESS]

Witness No. 2

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: [SECOND WITNESS NAME]

Telephone: [TELEPHONE]

Address: [ADDRESS]

### DRAFTING NOTE: EXECUTION REQUIREMENTS

South Carolina requires the principal to sign and date the health care power of attorney in the physical presence of two witnesses. If the principal cannot sign the health care power of attorney, another person may, at the principal's direction, sign and date it in the physical presence of the principal and two witnesses. The two witnesses must either:

- Observe the principal or other person signing the power of attorney.
- Witness the principal's acknowledgment of the principal's signature on the health care power of attorney.

(S.C. Code Ann. § 62-5-503(a)(2), (3).)

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Each witness must state in a declaration that, to the extent the witness has knowledge, at the time of the execution of the health care power of attorney:

- The witness is not related to the principal by blood, marriage, or adoption, as a spouse, lineal ancestor, or descendant of the parents of the principal, or spouse of any of them.
- The witness is not directly financially responsible for the principal's medical care.
- The witness is not entitled to a portion of the principal's estate on their death under the principal's will then existing or as an heir by intestate succession.
- The witness is not a beneficiary of the principal's life insurance policy.

- The witness is not appointed as agent or successor agent in the health care power of attorney.
- No more than one witness is an employee of a health care facility in which the principal is a patient.
- No witness is the attending physician or an employee of the attending physician.
- No witness has a claim against the principal's estate on their death.

(S.C. Code Ann. § 62-5-503(a)(3).)

(This portion of the document is optional and is not required to create a valid health care power of attorney.)

STATE OF SOUTH CAROLINA

COUNTY OF [COUNTY]

The foregoing instrument was acknowledged before me by the Principal on [MONTH] [DAY], [YEAR].

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Notary Public for South Carolina

My Commission Expires:-----

### DRAFTING NOTE: NOTARY

A principal's signature on a health care power of attorney does not need to be acknowledged by a notary or other authorized person (S.C. Code Ann. § 62-5-504). However, signing in the presence of a notary may help establish the integrity of the execution if there is a conflict

between interested parties regarding the power of attorney's validity. The principal should consider notarizing the health care power of attorney if the principal believes there may be these conflicts. If a notary does not witness the principal's signature, counsel should delete the notary block.

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