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## HEALTH Living Wills: Allow Pregnant Women and Patients in a Coma or Persistent Vegetative State to Have Life-Sustaining Measures Withheld or Withdrawn

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## HEALTH

### *Living Wills: Allow Pregnant Women and Patients in a Coma or Persistent Vegetative State to Have Life-Sustaining Measures Withheld or Withdrawn*

CODE SECTIONS: O.C.G.A. §§ 31-32-1 to -4, -8 to -9, -11 (amended)  
BILL NUMBER: HB 968  
ACT NUMBER: 1139  
SUMMARY: The Act expands the living wills provisions of the Georgia Code to allow the declarant of a living will to authorize the withholding or withdrawal of life-sustaining measures in the event that the declarant subsequently enters into a coma or persistent vegetative state. The Act also allows life-sustaining measures to be withheld or withdrawn from a pregnant woman as long as her fetus is not viable when the question arises as to whether to withhold or withdraw such life-sustaining measures. The Act further allows health care facilities to provide patients with forms for living wills in accordance with federal law.

EFFECTIVE DATE: April 16, 1992

### *History*

In 1984, the General Assembly enacted legislation which allows competent adults to execute living wills.<sup>1</sup> This legislation allowed a declarant<sup>2</sup> to specify that, in the event that she was diagnosed as having a terminal condition, and where her death from such terminal condition was imminent, it was her desire that any life-sustaining measures should be withheld or withdrawn.<sup>3</sup> Under that statute, a living will also provided that if the declarant was unable to state her intentions at the time that she was in a terminal condition, the living

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1. O.C.G.A. §§ 31-32-1 to -12 (1991 & Supp. 1992); see Charles R. Adams, III & Cynthia T. Adams, *An Overview of Georgia's Living Will Legislation*, 36 MERCER L. REV. 45 (1984).

2. A declarant is a competent adult who has executed a living will in accordance with Georgia's living wills statutes. O.C.G.A. §§ 31-32-2(3) to (4), -3(a) (Supp. 1992).

3. 1989 Ga. Laws 1182 (formerly found at O.C.G.A. § 31-32-3 (1991)); 1986 Ga. Laws 445, 446-48 (formerly found at O.C.G.A. § 31-32-3 (1991)); 1984 Ga. Laws 1477, 1478-82 (formerly found at O.C.G.A. §§ 31-32-2 to -3 (1991)).

will would be considered as the declarant's final expression of her intention to have life-sustaining measures withheld or withdrawn.<sup>4</sup>

One important exception to the 1984 living wills legislation was that in the event that a woman was pregnant at the time when her living will was sought to be given effect, her living will would have no force or effect during her pregnancy.<sup>5</sup> Further, that legislation did not provide for an individual to state her intention to have life-sustaining measures withheld or withdrawn in the event that she entered into a coma or persistent vegetative state.<sup>6</sup>

Following the enactment of Georgia's living wills statutes, some of the situations which were not covered by that legislation were addressed by several state and federal cases. In 1984, the Supreme Court of Georgia held that where an infant has been diagnosed as being terminally ill and in a chronic vegetative state, and where such infant has no reasonable expectation of recovery, his parents or legal guardian can ask that life-sustaining measures be withheld or withdrawn without having to seek prior judicial approval.<sup>7</sup> In 1989, the Supreme Court of Georgia further held that where a quadriplegic who relies on a respirator to breathe seeks to have such respirator turned off, the State's interest in preserving life does not outweigh the quadriplegic's right to have his respirator turned off.<sup>8</sup> The court reasoned that a living will by itself would not be effective in such a situation because such a person would not have a "terminal condition" within the meaning of the living wills statutes, due to the fact that the person's death would not be imminent.<sup>9</sup> Finally, in 1990, the Supreme Court of the United States held that while a competent person might have the right to refuse life-sustaining measures,<sup>10</sup> a state may require clear

4. O.C.G.A. § 31-32-3 (Supp. 1992).

5. 1989 Ga. Laws at 1182 (formerly found at O.C.G.A. § 31-32-3(b) (1991)); 1986 Ga. Laws at 446 (formerly found at O.C.G.A. § 31-32-3(b) (1991)); 1984 Ga. Laws at 1480 (formerly found at O.C.G.A. § 31-32-3(b) (1991)).

6. See 1989 Ga. Laws at 1182 (formerly found at O.C.G.A. § 31-32-3 (1991)); 1986 Ga. Laws at 446-48 (formerly found at O.C.G.A. § 31-32-3 (1991)); 1984 Ga. Laws at 1478-82 (formerly found at O.C.G.A. §§ 31-32-2 to -3 (1991)). Of course, if the declarant entered into a coma or persistent vegetative state either before or after the onset of a terminal condition, and where her death from such terminal condition was imminent, the declarant's living will would be effective.

7. In re L.H.R., 321 S.E.2d 716 (Ga. 1984). In dicta, the court extended its holding to incompetent adult patients who are "terminally ill, in a chronic vegetative state with no reasonable possibility of regaining cognitive function." *Id.* at 723. This type of situation was not addressed by the living wills statutes prior to the Act. See *supra* note 6 and accompanying text.

8. State v. McAfee, 385 S.E.2d 651 (Ga. 1989).

9. *Id.* at 652.

10. Cruzan v. Director, Missouri Dep't of Health, 110 S. Ct. 2841, 2852 (1990). The Court did not explicitly find a constitutional right to refuse life-sustaining measures, but stated that "for the purposes of this case, we assume that the United States

and convincing evidence of a person's desire to have life-sustaining measures withdrawn before allowing such measures to be withdrawn.<sup>11</sup>

In 1990, the General Assembly passed the Durable Power of Attorney for Health Care Act.<sup>12</sup> This Act allows a competent adult to appoint an agent to make health care decisions for him, including the ability to authorize the withholding or withdrawal of life-sustaining measures in the event that the patient subsequently enters into a coma or persistent vegetative state.<sup>13</sup> As such, this Act provided a broader range of options than was previously available to an individual under Georgia's living wills statutes.<sup>14</sup>

Following these court decisions and the passage of the Durable Power of Attorney for Health Care Act, advocates for the elderly sought a way to conform the living wills statutes to this case law and to the powers available to an agent acting pursuant to a valid durable power of attorney for health care.<sup>15</sup> These advocates wanted individuals to be able to make the same decisions for themselves through a living will that their agents could make for them through a durable power of attorney for health care.<sup>16</sup>

### HB 968

The language of the bill was drafted primarily by the Committee on Legal Services to the Elderly, a committee of the Younger Lawyers Section of the State Bar of Georgia.<sup>17</sup> Additional drafting was provided

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Constitution would grant a competent person a constitutionally protected right to refuse life-saving hydration and nutrition." *Id.*

11. *Id.* at 2854. A valid living will would presumably provide clear and convincing evidence of an intent to have life-sustaining measures withdrawn. In *Cruzan*, however, the patient did not have a living will. *See id.*

12. O.C.G.A. §§ 31-36-1 to -13 (1991); *see Legislative Review*, 7 GA. ST. U. L. REV. 297 (1990).

13. O.C.G.A. §§ 31-36-4 to -10 (1991).

14. Compare 1989 Ga. Laws 1182 (formerly found at O.C.G.A. §§ 31-32-3 to -4 (1991)) and 1987 Ga. Laws 322 (formerly found at O.C.G.A. § 31-32-5 (1991)) and 1986 Ga. Laws 445, 446-48 (formerly found at O.C.G.A. §§ 31-32-3, -6 (1991)) and 1985 Ga. Laws 455 (formerly found at O.C.G.A. § 31-32-9 (1991)) and 1984 Ga. Laws 1477 (formerly found at O.C.G.A. §§ 31-32-1 to -12 (1991)) with O.C.G.A. §§ 31-36-1 to -13 (1991).

15. Interview with Rep. Jim Martin, House District No. 26, in Atlanta, Georgia (Apr. 10, 1992) [hereinafter Martin Interview]; Telephone Interview with Becky Kurtz, Member, Committee on Legal Services to the Elderly, Younger Lawyers Section of the State Bar of Georgia (Apr. 7, 1992) [hereinafter Kurtz Interview].

16. Martin Interview, *supra* note 15; Kurtz Interview, *supra* note 15; *see Ann Hardie, Living-Will Bill Extends Rights to Comatose Patients*, ATLANTA CONST., Jan. 27, 1992, at D3.

17. Martin Interview, *supra* note 15; Kurtz Interview, *supra* note 15. A similar bill

by the Fiduciary Section of the State Bar of Georgia.<sup>18</sup> The language of the bill was then endorsed by the Board of Governors of the State Bar of Georgia.<sup>19</sup> The bill's sponsor purposely waited until late in the 1991 session to introduce the bill in order to allow time between the 1991 and 1992 sessions for all interested parties to consider the bill and prepare any suggested amendments.<sup>20</sup> The bill was carried over to the 1992 session, and was initially considered by the Health Care Facilities Subcommittee of the House Health and Ecology Committee.<sup>21</sup>

The Health Care Facilities Subcommittee proposed three changes to the original bill.<sup>22</sup> The first amendment would have changed the original language of the bill to require only one physician to diagnose the patient as having a terminal condition or as being in a coma or persistent vegetative state.<sup>23</sup> The reason for this amendment was that it seemed unnecessary to require two physicians to make such decisions.<sup>24</sup> By the time the bill was considered by the House Health and Ecology Committee, however, this proposed amendment had been criticized by advocates for the elderly who believed that it was better to retain a two physician requirement, and therefore the amendment was withdrawn.<sup>25</sup>

The second proposed amendment, which was adopted by the Committee, made a slight change to the wording of the definition for a persistent vegetative state. The original bill defined a persistent vegetative state as a "state of severe mental impairment in which only involuntary bodily functions are sustained."<sup>26</sup> The amended definition<sup>27</sup> defines a persistent vegetative state as a "state of severe mental impairment in which only involuntary bodily functions are

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was introduced in the Senate during the 1992 session. See SB 605, as introduced, 1992 Ga. Gen. Assem. After passing the Senate, this bill was almost identical to HB 968 except that it did not include any language allowing a pregnant woman's living will to be given effect. See SB 605 (SCS), 1992 Ga. Gen. Assem. This bill was introduced to give the General Assembly two versions of living wills legislation, thereby increasing the possibility that some form of legislation would be passed. Martin Interview, *supra* note 15.

18. Kurtz Interview, *supra* note 15.

19. *Id.*; Letter from Eleanor Crosby, Chairperson for the Committee on Legal Services to the Elderly, Younger Lawyer's Section of the State Bar of Georgia, to Rep. Charles Thomas (Feb. 27, 1992) (available in Georgia State University College of Law Library).

20. Martin Interview, *supra* note 15. Rep. Martin was the sponsor of HB 968.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*; Kurtz Interview, *supra* note 15.

26. HB 968, as introduced, 1991 Ga. Gen. Assem.

27. HB 968 (HCS), 1992 Ga. Gen. Assem.

present."<sup>28</sup> This amendment was proposed by the Medical Association of Georgia, which was concerned that physicians might misinterpret the term "sustained" to include situations in which the patient is capable of being artificially sustained.<sup>29</sup>

The third proposed amendment, which was also adopted by the Committee,<sup>30</sup> allows a woman's living will to remain in effect even if she is pregnant at the time life-sustaining measures are sought to be withheld or withdrawn.<sup>31</sup> One important exception to this provision is that no effect will be given to a woman's living will if her fetus is viable<sup>32</sup> at the time life-sustaining measures are sought to be withheld or withdrawn.<sup>33</sup> Prior to withholding or withdrawing life-sustaining measures to a woman pursuant to her living will, her attending physician must first determine that she 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."<sup>34</sup>

This amendment was suggested to the sponsor of the bill by a member of his staff, who informed the sponsor that most of the states which have living wills statutes will not carry out the requests found in a woman's living will if the woman is pregnant at the time when the living will is sought to be given effect.<sup>35</sup> This amendment was modeled loosely on a similar proposal which the Pennsylvania Legislature failed to adopt,<sup>36</sup> and was controversial because of its connection with the issue of abortion.<sup>37</sup> Indeed, when this language was considered by the full House and by the Senate Health and Human Services Committee, it passed each of those bodies by a bare majority.<sup>38</sup>

28. O.C.G.A. § 31-32-2(9) (Supp. 1992) (emphasis added).

29. Martin Interview, *supra* note 15.

30. HB 968 (HCS), 1992 Ga. Gen. Assem.

31. O.C.G.A. § 31-32-3(b) (Supp. 1992).

32. The term "viable" was chosen to reflect the language used by the Supreme Court of the United States in *Roe v. Wade*, 410 U.S. 113, 163-64 (1973). Martin Interview, *supra* note 15.

33. O.C.G.A. § 31-32-3(b) (Supp. 1992). This provision is not effective unless the woman signs her initials beside the provision in her living will. *Id.*

34. *Id.* § 31-32-8(a)(1) (Supp. 1992).

35. Martin Interview, *supra* note 15; see Press Release from the Center for Women Policy Studies (Jan. 6, 1992) (available in Georgia State University College of Law Library).

36. Martin Interview, *supra* note 15; see Press Release from the Center for Women Policy Studies, *supra* note 35.

37. See Steve Harvey and Ann Hardie, *House Adds to Patients' Right to Die; Abortion Issue Intrudes on Women's Living Wills*, ATLANTA CONST., Feb. 21, 1992, at E3.

38. Martin Interview, *supra* note 15. Note that this language may be subject to attack if the State of Georgia places certain restrictions on a woman's ability to receive an abortion. This is an important consideration in light of recent decisions by the Supreme Court of the United States allowing states to increase the restrictions

The House Health and Ecology Committee also passed an amendment suggested by the Georgia Hospital Association which would allow health care facilities to comply with recently enacted federal law.<sup>39</sup> Sections 4206 and 4751 of the Omnibus Budget Reconciliation Act of 1990<sup>40</sup> and corresponding federal regulations<sup>41</sup> require that health care facilities which receive Medicare and Medicaid funding must notify all patients of the patients' rights under state law regarding the execution of living wills and durable powers of attorney for health care. Prior to the enactment of this requirement, Georgia's living will statutes prohibited health care facilities from preparing or even providing forms for living wills unless specifically requested to do so by the patient.<sup>42</sup> The amendment adopted by the House Health and Ecology Committee<sup>43</sup> and incorporated into the Act<sup>44</sup> allows health care facilities to provide such information and forms without the prior request of the patient, thereby eliminating this conflict between state and federal law.<sup>45</sup>

Under the language of the original bill, HB 968 required that two physicians must determine whether the declarant of a living will is in a terminal condition, a coma, or a persistent vegetative state.<sup>46</sup> The original language, however, did not require either of the two physicians to be the declarant's attending physician.<sup>47</sup> Members of the House

on a woman's ability to obtain an abortion. See, e.g., *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S. Ct. 2791 (1992); *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). Georgia's Parental Notification Act, O.C.G.A. §§ 15-11-110 to -118 (1990 & Supp. 1992), requiring physicians to notify the parents of a minor about the minor's intent to obtain an abortion, does not appear to conflict with the language in Georgia's living will statutes, which require that the declarant of a living will must be a competent adult. See O.C.G.A. § 31-32-3(a) (Supp. 1992).

39. Martin Interview, *supra* note 15.

40. Pub. L. No. 101-508, 104 Stat. 1388 (1990) (codified in scattered sections of 42 U.S.C.).

41. 57 Fed. Reg. 8194 (1992) (to be codified at 42 C.F.R. pts. 417, 431, 434, 483-84, 489, 498).

42. 1985 Ga. Laws 455, 456 (formerly found at O.C.G.A. § 31-32-9(d) (1991)); 1984 Ga. Laws 1477, 1486 (formerly found at O.C.G.A. § 31-32-9(d) (1991)).

43. HB 968 (HCS), 1992 Ga. Gen. Assem.

44. O.C.G.A. § 31-32-9(d) (Supp. 1992).

45. Note that the Act does not require health care facilities to supply patients with forms for living wills, but merely allows them to provide such forms. See *id.* Note also that the Act still does not allow health care facilities to "prepare or offer to prepare living wills unless specifically requested to do so by a person desiring to execute a living will." *Id.*

46. HB 968, as introduced, 1991 Ga. Gen. Assem.

47. *Id.* The term "attending physician" is defined as follows:

[T]he 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

Health and Ecology Committee and advocates for the elderly expressed concern that one of the two physicians who make such decisions should be the declarant's attending physician.<sup>48</sup> Accordingly, the Committee adopted an amendment<sup>49</sup> requiring that one of the two physicians making the determination must be the declarant's attending physician.<sup>50</sup>

Other amendments were made to HB 968 on the House floor. The original language of the bill required that a declarant must have no reasonable expectation of regaining consciousness if he is in a coma, or of regaining significant cognitive function if in a persistent vegetative state, in order for his living will to be given effect.<sup>51</sup> The bill, however, did not provide a definition of reasonable expectation.<sup>52</sup> Thus, a definition of reasonable expectation was added to the bill<sup>53</sup> in an attempt to clarify this term as used in the Act.<sup>54</sup>

Another amendment reinstated the original language of the statute requiring that, in cases where a declarant suffers from a terminal condition, his death from that condition must be imminent in order for his living will to be effective.<sup>55</sup> The sponsor of the bill, along with the Medical Association of Georgia and the Georgia Hospital Association, had opposed this language, believing that a requirement that death from a terminal condition must be imminent would emasculate the entire intent of the bill.<sup>56</sup> This is because if a declarant's death was imminent, he would have no need for a living will.<sup>57</sup> Although the bill left the House with this provision,<sup>58</sup> the language was amended again by the Senate Health and Human Services Committee,<sup>59</sup> which substituted language similar to that found in the original version of the

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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."

O.C.G.A. § 31-32-2(1) (Supp. 1992).

48. Martin Interview, *supra* note 15.

49. HB 968 (HCS), 1992 Ga. Gen. Assem.

50. O.C.G.A. § 31-32-2(2), (9), (13) (Supp. 1992).

51. HB 968, as introduced, 1991 Ga. Gen. Assem. Note that two physicians must make this determination. *See id.*; O.C.G.A. § 31-32-2(2), (6), (9) (Supp. 1992).

52. HB 968, as introduced, 1991 Ga. Gen. Assem.

53. HB 968 (HCSFA), 1992 Ga. Gen. Assem.

54. O.C.G.A. § 31-32-2(11) (Supp. 1992). Reasonable expectation is defined as "the result of prudent judgment made on the basis of the medical judgment of a physician." *Id.*

55. HB 968 (HCSFA), 1992 Ga. Gen. Assem.

56. Martin Interview, *supra* note 15; Letter from the Medical Association of Georgia and the Georgia Hospital Association to Georgia Representatives (Mar. 24, 1992) (available in Georgia State University College of Law Library).

57. Martin Interview, *supra* note 15.

58. HB 968 (HCSFA), 1992 Ga. Gen. Assem.

59. HB 968 (SCS), 1992 Ga. Gen. Assem.



bill and omitted the requirement that death from a terminal condition must be imminent in order for a living will to have effect.<sup>60</sup>

Under the prior statute, any living will had to conform substantially with the pre-printed form which was found in the Code.<sup>61</sup> This requirement of having to substantially adhere to a pre-printed form restricted the options of a declarant in drafting a living will.<sup>62</sup> Further, since a living will which had been drafted out-of-state would be unlikely to adhere to the pre-printed form found in the Code, almost every living will drafted out-of-state would have to be re-drafted.<sup>63</sup> Thus, this section of the Code was amended to increase a declarant's flexibility in drafting a living will by providing that the form used by a declarant need only be similar to the pre-printed form found in the Code, and that "[a]ny declaration which constitutes an expression of the declarant's intent shall be honored, regardless of the form used or when executed."<sup>64</sup>

The original language of HB 968 provided that a declarant had to elect to have one of the following four life-sustaining measures withheld or withdrawn in the event that his living will was given effect: "nourishment and hydration, . . . nourishment but not hydration, . . . hydration but not nourishment, or [neither]."<sup>65</sup> A member of the nursing community pointed out to the sponsor of the bill that it made no sense to allow a declarant an option to withdraw hydration but not nourishment, since nourishment is considered to include hydration.<sup>66</sup> Thus, the House attempted to omit this option by means of an amendment,<sup>67</sup> leaving a declarant to choose among three options.<sup>68</sup>

60. O.C.G.A. § 31-32-2(13)(B) (Supp. 1992). The Act requires only that the death of the declarant "will occur as a result of such disease, illness, or injury." *Id.*

61. 1989 Ga. Laws 1182 (formerly found at O.C.G.A. § 31-32-3(b) (1991)); 1986 Ga. Laws 445, 446 (formerly found at O.C.G.A. § 31-32-3(b) (1991)); 1984 Ga. Laws 1477, 1480 (formerly found at O.C.G.A. § 31-32-3(b) (1991)).

62. Kurtz Interview, *supra* note 15.

63. *Id.*

64. O.C.G.A. § 31-32-3(b) (Supp. 1992). Note that this Code section, as amended, contains a typographical error. The Act states that living wills "executed on or after March 18, 1986, shall be valid indefinitely unless revoked." *Id.* The correct date for this provision should be March 28, 1986, which was the effective date of the 1986 amendment to this Code section. Martin Interview, *supra* note 15; see 1986 Ga. Laws at 446 (formerly found at O.C.G.A. § 31-32-3(b) (1991)); Letter from Terry A. McKenzie, Deputy Legislative Counsel, State Office of Legislative Counsel, to Rep. Jim Martin (July 13, 1992) (available in Georgia State University College of Law Library). The prior Code section contained the correct date. See 1989 Ga. Laws 1182 (formerly found at O.C.G.A. § 31-32-3(b) (1991)).

65. HB 968, as introduced, 1991 Ga. Gen. Assem.

66. Martin Interview, *supra* note 15.

67. HB 968 (HCSFA), 1992 Ga. Gen. Assem.

68. O.C.G.A. § 31-32-3(b) (Supp. 1992). Unfortunately, the House floor amendment was incorrectly drafted and the wrong phrase was deleted. Martin Interview, *supra*

As previously noted, prior to the Act, health care facilities were prohibited from preparing or offering to prepare living wills unless requested to do so by the patient.<sup>69</sup> The Georgia Department of Corrections is responsible for providing any necessary health care to its inmates.<sup>70</sup> Because of this requirement, the Department was concerned that it might be considered a health care facility under the statute, thereby limiting its ability to prepare living wills on behalf of its inmates.<sup>71</sup> An amendment suggested by the Department of Corrections<sup>72</sup> was added on the floor of the House<sup>73</sup> which provides that no person in the custody of the Georgia Department of Corrections shall be deemed to be a patient within the meaning of the Act, and that no correctional facility shall be deemed to be a hospital or other health care facility.<sup>74</sup>

Under prior law, a living will which was executed in a hospital or skilled nursing facility was not valid unless, in addition to the two witnesses required for the execution of all living wills, such living will was also signed either by a physician who was not participating in the care of the declarant or by the chief of staff of the hospital or skilled nursing facility.<sup>75</sup> The Georgia Hospital Association informed members of the Senate Health and Human Services Committee that hospitals believed that physicians were already overworked and that physicians did not need to be the ones to witness the execution of a living will,

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note 15. Instead of eliminating the option of "hydration but not nourishment," the amendment omitted the option of "nourishment but not hydration." HB 968 (HCSFA), 1992 Ga. Gen. Assem. Thus, the language of the Act gives the declarant the following options as to which life-sustaining measures should be withheld or withdrawn: "nourishment and hydration, . . . hydration but not nourishment, or [neither]." O.C.G.A. § 31-32-3(b) (Supp. 1992). Similar language was also added to the definition of "life-sustaining measures." See *id.* § 31-32-2(6) (Supp. 1992). Note however that under the authority of O.C.G.A. § 31-32-3(b), a living will can be drawn with the correct option stated. Martin Interview, *supra* note 15; see O.C.G.A. § 31-32-3(b) (Supp. 1992); *supra* note 64 and accompanying text.

69. See *supra* notes 39-45 and accompanying text.

70. O.C.G.A. § 42-5-2 (Supp. 1992).

71. Martin Interview, *supra* note 15. One reason why the Department of Corrections wanted to provide inmates with the ability to execute living wills was that an inmate's living will would allow the Department to withdraw life-sustaining measures from an inmate with a terminal condition without concern that the withdrawal might be challenged, thereby reducing costs for caring for inmates with terminal conditions. Memorandum from Sharon Gipson, Administrative Hearing Officer, Department of Corrections, to Mike Spradlin, Health Services Administrator (Dec. 2, 1991) (available in Georgia State University College of Law Library).

72. Martin Interview, *supra* note 15.

73. HB 968 (HCSFA), 1992 Ga. Gen. Assem.

74. O.C.G.A. § 31-32-9(d) (Supp. 1992).

75. 1989 Ga. Laws 1182, 1185 (formerly found at O.C.G.A. § 31-32-4 (1991)); 1984 Ga. Laws 1477, 1483 (formerly found at O.C.G.A. § 31-32-4 (1991)).

since this could be done by any member of the hospital staff.<sup>76</sup> An amendment was added to the bill<sup>77</sup> which provides that, in a hospital, a living will can now be witnessed not only by a physician or the chief of staff, but also by "a person on the hospital staff who is not participating in the care of the patient" and who is designated by both the chief of staff and the hospital administrator to witness a living will.<sup>78</sup> No similar provision was added regarding skilled nursing facilities, however.<sup>79</sup>

Finally, the Act also specifies that if the declarant of a valid living will also executes a valid durable power of attorney for health care, unless otherwise specifically provided in such durable power of attorney for health care, the declarant's living will is "ineffective and inoperative as long as there is an agent available to serve pursuant to" the durable power of attorney for health care.<sup>80</sup> This language regarding the priority of durable powers of attorney for health care was necessary to correspond with similar language included in the Durable Power of Attorney for Health Care Act,<sup>81</sup> which gave an agent of a durable power of attorney for health care priority over any instruction by a declarant in his living will regarding the withholding or withdrawal of life-sustaining measures.<sup>82</sup>

*Grantland G. King, III*

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76. Martin Interview, *supra* note 15.

77. HB 969 (SCS), 1992 Ga. Gen. Assem.

78. O.C.G.A. § 31-32-4 (Supp. 1992).

79. *See id.*

80. *Id.* § 31-32-11(d) (Supp. 1992).

81. *Id.* §§ 31-36-1 to -13 (1991).

82. Martin Interview, *supra* note 15; *see* O.C.G.A. § 31-36-11 (1991).