

October 24, 1988

Councilmember Wilhelmina Rolark  
The District Building  
1350 Pennsylvania Avenue, N.W.  
Room 125  
Washington, D.C. 20004

Re: Health-Care Decisions Act of 1988  
Bill 7-131

Dear Councilmember Rolark:

The undersigned, who are all of the members of the Steering Committee of the Estates, Trusts and Probate Law Section of the District of Columbia Bar, are writing in general support of the Health-Care Decisions Act of 1988, Bill 7-131, which is under consideration by the Council. In addition to the comments previously submitted with the Steering Committee's letter of October 9, 1987 (copy enclosed), there is one provision that was amended since our previous submission that we believe should be further amended in order to better effectuate the goals of the Act.<sup>1/</sup>

Section 12(a) of the Act would prohibit an attorney in fact under a durable power of attorney for health care from consenting to a "life or death decision". We believe this limitation is both unworkable and unduly restrictive for the following reasons. First, the whole purpose of the Act is to permit a person to choose another to make medical decisions on his behalf without requiring time-consuming and cumbersome court approval of such decisions. An important premise underlying the giving of a health care power of attorney is that the principal has chosen an agent whom he trusts completely and with whom he has discussed his desires in the event of incapacity. The agent will know far more than the

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<sup>1/</sup> The views expressed herein represent only those of the Estates, Trusts and Probate Section of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

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court about what the principal would decide if he were able to make and communicate a medical decision himself. Preventing the agent from making a "life or death decision" on behalf of the principal and instead placing that decision in the hands of the court would undermine, and possibly defeat, the principal's right to have his intentions carried out.

Second, virtually every medical decision could be construed as a "life or death decision", including decisions as to surgical procedures, the administration of medication, and even certain dietary choices. Even seemingly routine medical and surgical decisions can have life or death implications. The proposed bill would arguably require an attorney in fact to seek court approval before consenting to the administration of anesthesia or a proposed change in medication, because such decisions have inherent risks of fatality and therefore may constitute "life or death decisions". Thus, preventing an attorney in fact from making "life or death decisions" could operate to prevent the attorney in fact from making any decisions on which he is consulted.

In addition, we believe the Act should permit individuals to authorize their attorneys in fact to decide whether or not life-sustaining procedures should be utilized in the case of a terminally ill principal in the same manner as the principal himself could decide under the Natural Death Act of 1981.

In our collective experience, we have found that our clients desire and specifically request powers of attorney that permit their agents to decide whether or not life-sustaining procedures should be utilized in terminal cases. We believe that people should have the right to delegate these decisions to their designated agents. The Health-Care Decisions Act as currently written would deprive people of this important right.

Accordingly, we believe the "life or death decision" clause should be deleted from Section 12(a). Further, we urge that a new provision be added to the Act affirmatively permitting individuals to authorize their attorneys in fact to decide to withhold or withdraw life-sustaining procedures under the circumstances described in the Natural Death Act. We believe that these amendments will clarify and strengthen the Act for the benefit of all parties concerned.

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If we can be of any further assistance with respect to the Health-Care Decisions Act of 1988, please contact the chairperson of the Steering Committee, Carol Rhees, at 429-6220, or Nancy Fax, at 457-7317.

Thank you for your consideration.

Sincerely,

Carol A. Rhees, Chairperson  
Henry L. Rucker, Vice Chairperson  
Thomas J. Cholis  
Paul B. Cromelin, III  
Nancy G. Fax  
Virginia A. McArthur  
Lloyd Leva Plaine

cc: David A. Clarke, Chairman  
Frank Smith, Jr., Chairman Pro Tempore  
Charlene Drew Jarvis, Councilmember  
Nadine P. Winter, Councilmember  
H.R. Crawford, Councilmember  
John A. Wilson, Councilmember  
James E. Nathanson, Councilmember  
Harry L. Thomas, Councilmember  
Carol Schwartz, Councilmember at Large  
Hilda H. M. Mason, Councilmember at Large  
Betty Ann Kane, Councilmember at Large  
John Ray, Councilmember at Large