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The District of Columbia Bar

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MEMORANDUM

TO: Members of the Board of Governors

FROM: Lynne M. Lester *LML*
Manager, Divisions Office

DATE: May 29, 1986

SUBJECT: Letter addressed to The Honorable Wilhelmina Rolark, Chair, Committee on Judiciary, D.C. City Council in support of the Health Care Decisions Act of 1985, Bill 6-257 and the District of Columbia Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1985, Bill 6-7.

Pursuant to Division Guideline No. 13, Section a, the enclosed proposed public statement is being sent to you by Legislation Committee, Courts, Lawyers and the Administration of Justice Division

(a)(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Division will forward (by mail or otherwise) a one-page summary of the comments (summary forms may be obtained through the Divisions Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager for Divisions. The one-page summary will be sent to the Chairperson(s) of each Division steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Division's Board of Governors liaison, and the chairperson of the Committee on Divisions. Copies of the full text will be provided upon request through the Divisions Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Division, Bar committee or Board of Governors

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account). The Manager for Divisions shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Divisions shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Divisions within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or Committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Division may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period."

a(vi): The Board of Governors may request that the proposed comments be placed on the agenda of the Board of Governors for the following two reasons only:

(a) The matter is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VII, Section 1, should be called, or (b) the matter does not relate closely and directly to the administration of justice, involves matters which are primarily political, or as to which evaluation by lawyers would not have particular relevance.

a(v): Another Division or Committee of the Bar may request that the proposed set of comments by a Division be placed on the Board's agenda only if such Division or Committee believes that it has greater or coextensive expertise in or jurisdiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline of proposed alternate comments of the Division or Committee are filed with both the Manager for Divisions and the commenting Division's Chairperson(s). The short explanation and outline of proposed alternate comments will be forwarded by the Manager for Divisions to the Board of Governors.

a(vi): Notice of the request that the statement be placed on the Board's agenda lodged with the Manager for Divisions by any Board member may initially be telephoned to the Manager for Divisions (who will then inform the commenting Division), but must be supplemented by a written objection lodged within seven days of the oral objection.

Please call me by 5:00 p.m., Thursday, June 5, 1986
if you wish to have this matter placed on the Board of Governors'
agenda for Tuesday, June 17, 1986.

Enclosures

Division 4
Courts, Lawyers & the Administration of Justice
Of The District of Columbia Bar

Steering Committee:

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Co-Chair
David J. Hayes
Co-Chair
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May 15, 1986

Honorable Wilhelmina Rolark
Chairperson
Committee on Judiciary
Council of the District of Columbia
District Building
1350 Pennsylvania Avenue, Northwest
Washington, D.C. 20004

Dear Councilmember Rolark:

On behalf of the Legislation Committee of Division IV of the District of Columbia Bar, we urge you to expedite consideration of the Health Care Decisions Act of 1985, Bill 6-257, introduced to the Council a year ago, and the District of Columbia Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1985, Bill 6-7. 1/ In addition, we urge you to consider these Bills at the same time since they address similar concerns. However, because we strongly believe both bills should be considered and approved by the Council, we offer the following comments regarding amendments to the bills to ensure their consistency.

1/

 STANDARD DISCLAIMER

"The views expressed herein represent only those of Division IV: Courts, Lawyers, and the Administration of Justice of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors."

Divisions Infoline—331-4364

The District of Columbia Bar, 1707 L Street, Sixth Floor, Washington, D.C. 20036-4202, (202) 331-3883

Bill 6-7, Section 2-107

This section describes the general powers and duties of a guardian. To insure consistency with those sections of Bill 6-257 which contain the authority for those exercising a power of attorney and to protect an individual, we recommend that Section 2-107(c)(2)-(3) be amended as follows:

(c) a guardian shall not have the power

* * *

(2) to consent to convulsive therapy, experimental treatment that has not been approved by an institutional review board that complies with the federal standards contained in 45 C.F.R. Part 46, or behavior modification programs involving aversive stimuli unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court; or

(3) to consent to the withholding of non-emergency life-saving medical procedures unless it appears that the incapacitated person would have consented to the withholding of such procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court, or unless the attending physician and family members agree that the benefits of the proposed threatening treatment would outweigh the burdens of the treatment given the patients medical prognosis and history, and the patient has been certified incapable of making such a decision under section 6 of Bill 6-257.

With respect to Bill 6-257, we recommend that the definition of "incapacitated individual" in section 4(4) be amended to provide that it means "any adult individual who lacks sufficient physical or mental capacity * * *." Certainly medical decisions for a non-adult are made by the child's parents or guardian. In addition, we suggest that the limitations contained in section 2-107(c) of Bill 6-7, with respect to a guardian, be incorporated, as amended above, into section 11 of Bill 6-257 for consistency. In the absence of a durable power of attorney, neither a court-appointed guardian nor a family member should have any greater authority under section 11 of Bill 6-257 than either would have under section 2-107(c) of Bill 6-7.

Honorable Wilhelmina Rolark

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May 15, 1986

In closing, we urge the Judiciary Committee to hold hearings on the bills discussed herein and we hope that our comments will be of assistance to the committee.

Legislation Committee
Division IV of the D.C. Bar

By: Richard B. Nettler
Richard B. Nettler, Chair