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Testimony of Kate McEvoy
Chair of the Elder Law Section of the Connecticut Bar Association (CBA)

In Support of Raised Bill No. 7163
An Act Concerning Revisions to Department of Public Health Statutes

Judiciary Committee
February 26, 2007

Senator Handley, Representative Sayers, members of the Public Health Committee, thank you for the opportunity to comment on **Raised House Bill 7163, An Act Concerning Revisions to Department of Public Health Statutes**. My name is Kate McEvoy, and I am the Chair of the Elder Law Section of the Connecticut Bar Association.

Position:

The Elder Law Section of the Connecticut Bar Association supports Sections 1, 2 and 19-22 of Raised Bill 7163, An Act Concerning Revisions to Department of Public Health Statutes.

These sections seek to make technical corrections to the Connecticut advance directives statutes, which were in 2006 modernized and improved by the Legislature based on a bill raised by this committee. Specifically:

- **Section 1** revises Connecticut General Statutes Section 1-43, the statutory power of attorney form, to remove reference to health care decisions (sub-section L of the form), this reflecting the fact that Section 59 of P.A. 06-195 repealed authority for use of the form for health care decisions;
- **Section 2** revises C.G.S. Section 1-55, the definition of the term "all other matters" as it is used in the power of attorney form, to remove health care decisions from this catch-all category;
- **Sections 20 and 21** revise sub-section (a) of C.G.S. 19a-575a, the statutory combined advance directives form, and C.G.S. Section 19a-577, the statutory appointment of a health care representative, to clarify that a health care representative may make all types of decisions that are referenced in this section other than decisions provided for elsewhere in the statutes (e.g. psychosurgery, shock therapy); and

- **Section 22** revises C.G.S. 19a-580f, which provides for ongoing validity of directives executed prior to October 1, 2006, to reflect the legislative intent to cover not only living wills, but also 1) appointments of attorneys-in-fact for health care decisions through power of attorney forms; and 2) appointments of health care agents.

Enactment of these corrections will fully realize the goal of streamlining the process of executing advance directives such that citizens can more easily and effectively express their personal preferences concerning end-of-life health care decisions. Therefore, the Elder Law Section of the Connecticut Bar Association urges this committee to support the above referenced sections of Raised House Bill 7163.

Background

In Spring 2006, the Legislature modernized and simplified Connecticut law concerning advance directives for health care. These important changes, which were part of Public Act 06-195, became effective on October 1, 2006.

Based on work that was initiated by the Robert Wood Johnson-funded Connecticut Coalition to Improve End-of-Life Care, advocates from many disciplinary perspectives came together to call for these changes. Ultimately, this involved diverse organizations and agencies, including the Elder Law and Estates & Probate Sections of the Connecticut Bar Association, Connecticut Legal Services, the Connecticut Legal Rights Project, the Connecticut Hospital Association, and departments of the State; notably, the Departments of Mental Health and Addiction Services (DMHAS) and Mental Retardation (DMR). The convening group was able to actively confer with Assistant Attorney General Henry Salton throughout the process of drafting the proposed changes.

A summary of the 2006 changes made by P.A. 06-195 follows below:

- **Appointing a Proxy**

The powers of the health care agent and the attorney-in-fact for health care decisions were blended into a unified proxy called the “**health care representative**”, who has the authority to make any and all health care decisions for a person who is incapable of expressing those wishes him or herself. Because it was no longer needed, the Act repealed the statute that provided for appointing an attorney-in-fact for health care decisions using a durable power of attorney form.

- **Expansion of Living Will Form**

The living will form was expanded to permit individuals to indicate their wishes concerning both life support and any other aspect of health care.

- **Clarification of the Role of Conservators**

Where a conservator of the person has been appointed by a Court of Probate for an individual who has been determined to lack legal capacity (a ward), the Act provides that the conservator must:

- except as otherwise provided in statutes (e.g. statutes concerning shock therapy), comply with the previously executed advance directives of a ward; and
- allow the ward's health care representative to continue to make health care decisions for him or her.

- **Recognition of Advance Directives From Other States and Countries**

The Act provides for recognition of advance directives that are validly executed in other states and foreign countries and are consistent with Connecticut public policy.