October 9, 1987

BY HAND

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

Re: District of Columbia
Health-Care Decisions
Act of 1987, Bill 7-131

Dear Ms. Rolark:

Most of the undersigned currently serve on the Steering Committee of the Estates, Trusts and Probate Section of the District of Columbia. We are writing in support of the District of Columbia Health-Care Decisions Act of 1987, Bill 7-131 which is under consideration by the Council. This is an important piece of legislation for the District of Columbia.

Our attached comments concerning the Bill do not relate to the fundamental structure of the proposed law, which we enthusiastically endorse. We have noted a few areas which, if changed, would clarify which statutes have priority in certain situations among this Bill, the District of Columbia Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1986 and the District of Columbia Natural Death Act of 1981.

We wish to be of whatever assistance we may be to you and the Council with regard to this important matter. If you should find it helpful for any one or more of us to meet with you or a member of your staff, please do not hesitate to call Ms. Rhees at 429-6220.

Thank you for your kind consideration.

Sincerely yours,

by Lloyd Leva Plaine

Carol A. Rhees
Thomas J. Egan
Martin J. McNamara
Thomas J. Cholis
Henry Rucker
Lloyd Leva Plaine
Nicholas D. Ward
Richard S. T. Marsh

cc (w/encl.): 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

Comments on Bill 7-131
The District of Columbia "Health-Care Decisions Act of 1987"

1. Section 4 - Definitions

We support the suggestion by Barbara Mishkin, Esq. and Michael Schuster, Esq., that the definition of "Durable Power of Attorney for Health Care" be modified to clarify the legal status of documents executed prior to enactment of the legislation. We recommend that Section 4(2) be amended by adding, at page 3, line 7, the following language:

> A power of attorney meeting the general requirements of this part, but executed (either in the District of Columbia or elsewhere) prior to its effective date, shall be legally valid.

2. Section 5 - Presumption of Capacity

On page 4, at the end of Section 5(a) and (b), add "or pursuant to the laws of any other jurisdiction."

On line 25 of page 4 correct the effective date reference to February 28, 1987 and add at end of line 29 "but with the effective date extended to January 1, 1988 as to the Guardianship Protective Proceedings portion of the Act (D.C. Act 7-35, effective June 1, 1987) or pursuant to the provisions of the laws of any other jurisdiction."

3. Section 7 - Durable Power of Attorney for Health Care

Consider conforming Sec. 7(a) and (b) to D.C. Code Ann. §§6-2422-2423 and adding the following as Section 7(d):

> "(d) It shall be the responsibility of the principal, or if he or she fails to do so, then the attorney in fact, to provide for notification

to his attending physician of the existence of the durable power of attorney for health care. An attending physician, when presented with the power of attorney, shall make a copy of it a part of the principal's medical records."

On line 25 of page 6, change "One" to "Both."

4. Section 8 - Rights and Duties of Attorney in Fact

On line 45 of page 7 at the end of (b)(2), add the following:

"The principal shall not be able to give or withhold such consent if there is outstanding a current certification of incapacity made in accordance with section 6 with respect to the principal."

5. Section 9 - Forms for Creating a Durable Power of Attorney

On line 27 of page 9, add "DOCTOR," after "SOCIAL WORKER."

On line 14 of page 13 substitute the word "BOTH" for the words "AT LEAST ONE OF THE." See comment 3 above.

6. Section 12 - Substituted Consent

On line 35 of page 16, add the words "after diligent investigation" after the word "ascertained."

7. Section 15 - Priority

Change Section 15 to Section 16 and add the following new section 15:

"Sec. 15. Priority:

"Nothing in this Act shall be deemed to affect the provisions of the Uniform Determination of Death Act of 1981. D.C. Code Ann. §§6-2401 through 6-2430 (1981, Cum. Supp. 1986); provided, however, that, subject to the provisions of Section 8(c) of this Act, in the event of a conflict between a health care decision made pursuant to the provisions of this Act and a declaration pursuant to the provisions of the

Uniform Determination of Death Act of 1981 or similar provisions of the laws of any other jurisdiction, the health care decision made pursuant to this Act shall control."