

CHAPTER 154

NATURAL DEATH

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154.01 Definitions. In this chapter:

(1) "Attending physician" means a physician licensed under ch. 448 who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a written, witnessed document voluntarily executed by the declarant under s. 154.03 (1), but is not limited in form or substance to that provided in s. 154.03 (2). Only the original declaration is a valid instrument.

(3) "Health care professional" means a person licensed, certified or registered under ch. 441, 448 or 455.

(4) "Inpatient health care facility" has the meaning provided under s. 140.86 (1) and includes community-based residential facilities, as defined in s. 50.01 (1g).

(5) "Life-sustaining procedure" means any medical procedure or intervention that, in the judgment of the attending physician, would serve only to prolong the dying process but not avert death when applied to a qualified patient. "Life-sustaining procedure" includes assistance in respiration, artificial maintenance of blood pressure and heart rate, blood transfusion, kidney dialysis and other similar procedures, but does not include:

(a) The alleviation of pain by administering medication or by performing any medical procedure.

(b) The provision of fluid maintenance and nutritional support.

(6) "Qualified patient" means a declarant who has been diagnosed and certified in writing to be afflicted with a terminal condition by 2 physicians, one of whom is the attending physician, who have personally examined the declarant.

(7) "Responsible person" means the attending physician, a health care professional working with the declarant, an inpatient health care facility in which the declarant is located or the declarant's spouse, child, parent, brother, sister, grandparent or grandchild.

(8) "Terminal condition" means an incurable condition caused by injury or illness that reasonable medical judgment finds would cause death imminently, so that the application of life-sustaining procedures serves only to postpone the moment of death.

History: 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m.

154.03 Declaration to physicians. (1) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration authorizing the withholding or withdrawal of life-sustaining procedures when the person is in a terminal condition, which shall take effect on the date of execution. A declaration must be signed by the declarant in the presence of 2 witnesses. If the declarant is physically unable to sign a declaration, the declaration must be signed in the declarant's name by one of the witnesses or some other person at the declarant's express direction and in his or her presence; such a proxy signing shall either take place or be acknowledged by the declarant in the presence of 2 witnesses.

Witnesses may not be related to the declarant by blood or marriage or entitled to any portion of the estate of the declarant upon his or her decease under any will of the declarant. The attending physician, the attending nurse or the attending medical staff, an employe of the attending physician or an employe of the inpatient health care facility in which the declarant is a patient who is a health care provider under s. 146.81 (1) and is involved in the medical care of that patient or any person with a claim against any portion of the estate of the declarant upon his or her death at the time of the execution of the declaration may not be a witness to a declaration. The declarant is responsible for notifying his or her attending physician of the existence of the declaration. An attending physician who is so notified shall make the original declaration a part of the declarant's medical records.

(1m) Notwithstanding sub. (1), an employe of the inpatient health care facility in which the declarant is a patient but who is not involved in the medical care or treatment of that patient may not be a witness to the declaration, regardless of whether or not the inpatient health care facility may have a claim against the estate of the declarant.

(2) The department of health and social services shall prepare and provide copies of the declaration for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department of health and social services may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health and social services shall be in the following form:

DECLARATION TO PHYSICIANS

Declaration made this day of (month), (year).

1. I,, being of sound mind, wilfully and voluntarily state my desire that my dying may not be artificially prolonged if I have an incurable injury or illness certified to be a terminal condition by 2 physicians who have personally examined me, one of whom is my attending physician, and if the physicians have determined that my death is imminent, so that the application of life-sustaining procedures would serve only to prolong artificially the dying process. Under these circumstances, I direct that life-sustaining procedures be withheld or withdrawn and that I be permitted to die naturally, with only:

- a. The continuation of nutritional support and fluid maintenance; and
- b. The alleviation of pain by administering medication or other medical procedure.

2. If I am unable to give directions regarding the use of life-sustaining procedures, I intend that my family and physician honor this declaration as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences from this refusal.

3. If I have been diagnosed as pregnant and my physician knows of this diagnosis, this declaration has no effect during the course of my pregnancy.

4. This declaration takes effect immediately.

I understand this declaration and I am emotionally and mentally competent to make this declaration.

Signed Address

I know the declarant personally and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, and am not entitled to any portion of the declarant's estate under any will of the declarant. I am neither the declarant's attending physician, the attending nurse, the attending medical staff nor an employe of the attending physician or of the inpatient health care facility in which the declarant may be a patient and I have no claim against the declarant's estate at this time, except that, if I am not a health care provider who is involved in the medical care of the declarant, I may be an employe of the inpatient health care facility regardless of whether or not the facility may have a claim against the estate of the declarant.

Witness Witness

This declaration is executed as provided in chapter 154, Wisconsin Statutes.

History: 1983 a. 202; 1985 a. 199.

Living will statutes: The first decade. Gelfand. 1987 WLR 737.

154.05 Revocation of declaration. (1) METHOD OF REVOCATION. A declaration may be revoked at any time by the declarant by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn or otherwise destroyed by the declarant or by some person who is directed by the declarant and who acts in the presence of the declarant.

(b) By a written revocation of the declarant expressing the intent to revoke, signed and dated by the declarant.

(c) By a verbal expression by the declarant of his or her intent to revoke the declaration. This revocation becomes effective only if the declarant or a person who is acting on behalf of the declarant notifies the attending physician of the revocation.

(2) **RECORDING THE REVOCATION.** The attending physician shall record in the patient's medical record the time, date and place of the revocation and the time, date and place, if different, that he or she was notified of the revocation.

History: 1983 a. 202.

154.07 Duties and immunities. (1) LIABILITY. No physician, inpatient health care facility or health care professional acting under the direction of a physician may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:

(a) Participating in the withholding or withdrawal of life-sustaining procedures under this chapter.

(b) Failing to act upon a revocation unless the person or facility has actual knowledge of the revocation.

(c) Failing to comply with a declaration, except that failure by a physician to comply with a declaration of a qualified patient constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the qualified patient to another physician who will comply with the declaration.

(2) **EFFECT OF DECLARATION.** The desires of a qualified patient who is competent supersede the effect of the declara-

tion at all times. If a qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures a declaration executed under this chapter is presumed to be valid. The declaration of a qualified patient who is diagnosed as pregnant by the attending physician has no effect during the course of the qualified patient's pregnancy. For the purposes of this chapter, a physician or inpatient health care facility may presume in the absence of actual notice to the contrary that a person who executed a declaration was of sound mind at the time.

History: 1983 a. 202.

154.11 General provisions. (1) SUICIDE. The withholding or withdrawal of life-sustaining procedures from a qualified patient under this chapter does not, for any purpose, constitute suicide. Execution of a declaration under this chapter does not, for any purpose, constitute attempted suicide.

(2) **LIFE INSURANCE.** Making a declaration under s. 154.03 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient.

(3) **HEALTH INSURANCE.** No person may be required to execute a declaration as a condition prior to being insured for, or receiving, health care services.

(4) **OTHER RIGHTS.** This chapter does not impair or supersede any person's legal right or responsibility to withhold or withdraw life-sustaining procedures.

(5) **INTENT.** Failure to execute a declaration under this chapter creates no presumption that the person consents to the use or withholding of life-sustaining procedures in the event of a terminal condition.

(6) **CONSTRUCTION.** Nothing in this chapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.

(7) **APPLICABILITY.** (a) A declaration under s. 154.03 (2), 1983 stats., that is executed before April 22, 1986, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1983 stats.

(b) A declaration under s. 154.03 (2), 1983 stats., that is executed after April 22, 1986, is void.

History: 1983 a. 202; 1985 a. 199.

154.15 Penalties. (1) Any person who wilfully conceals, cancels, defaces, obliterates or damages the declaration of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.

(2) Any person who, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, illegally falsifies or forges the declaration of another or conceals a declaration revoked under s. 154.05 (1) (a) or (b) or any responsible person who withholds personal knowledge of a revocation under s. 154.05 shall be fined not more than \$10,000 or imprisoned not more than 10 years or both.

History: 1983 a. 202; 1985 a. 199.