

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).

(2g) "Department" means the department of health and social services.

(2m) "Feeding tube" means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a qualified patient.

(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 nutrition or hydration.

(5m) "Persistent vegetative state" means a condition that reasonable medical judgment finds constitutes complete and irreversible loss of all of the functions of the cerebral cortex and results in a complete, chronic and irreversible cessation of all cognitive functioning and consciousness and a complete lack of behavioral responses that indicate cognitive functioning, although autonomic functions continue.

(6) "Qualified patient" means a declarant who has been diagnosed and certified in writing to be afflicted with a terminal condition or to be in a persistent vegetative state 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; 1991 a. 84

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, which shall take effect on the date of execution, authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. A declarant may not authorize the withholding or withdrawal of any medication, life-sustaining procedure or feeding tube if the declarant's attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the declarant pain or reduce the declarant's comfort. A declarant may not authorize the withholding or withdrawal of nutrition or hydration that is administered or otherwise received by the declarant through means other than a feeding tube unless the declarant's attending physician advises that, in his or her professional judgment, the administration is medically contraindicated. 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. 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 declaration a part of the declarant's medical records. No witness to the execution of the declaration may, at the time of the execution, be any of the following:

(a) Related to the declarant by blood, marriage or adoption.

(b) Have knowledge that he or she is entitled to or has a claim on any portion of the declarant's estate.

(c) Directly financially responsible for the declarant's health care.

(d) An individual who is a health care provider, as defined in s. 155.01 (7), who is serving the declarant at the time of execution, an employe, other than a chaplain or a social worker, of the health care provider or an employe, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient.

(2) The department shall prepare and provide copies of the declaration and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department shall include, in information accompanying the declaration, at least the statutory definitions of terms used in the declaration, statutory restrictions on who may be witnesses to a valid declaration, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The declaration

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91-92 Wis. Stats. 2864

distributed by the department of health and social services shall be in the following form:

DECLARATION TO PHYSICIANS

1. I,, being of sound mind, voluntarily state my desire that my dying may not be prolonged under the circumstances specified in this document. Under those circumstances, I direct that I be permitted to die naturally. If I am unable to give directions regarding the use of life-sustaining procedures or feeding tubes, I intend that my family and physician honor this document as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences from this refusal.

2. If I have a **TERMINAL CONDITION**, as determined by 2 physicians who have personally examined me, I do not want my dying to be artificially prolonged and I do not want life-sustaining procedures to be used. In addition, if I have such a terminal condition, the following are my directions regarding the use of feeding tubes (check only one):

- a. Use feeding tubes if I have a terminal condition....
- b. Do not use feeding tubes if I have a terminal condition....
- c. If I have not checked either box, feeding tubes will be used.

3. If I am in a **PERSISTENT VEGETATIVE STATE**, as determined by 2 physicians who have personally examined me, the following are my directions regarding the use of life-sustaining procedures and feeding tubes:

- a. Check only one:

Use life-sustaining procedures if I am in a persistent vegetative state....

Do not use life-sustaining procedures if I am in a persistent vegetative state....

If I have not checked either box, life-sustaining procedures will be used.

- b. Check only one:

Use feeding tubes if I am in a persistent vegetative state....

Do not use feeding tubes if I am in a persistent vegetative state....

If I have not checked either box, feeding tubes will be used.

4. By law, this document cannot be used to authorize: a) withholding or withdrawal of any medication, procedure or feeding tube if to do so would cause me pain or reduce my comfort; and b) withholding or withdrawal of nutrition or hydration that is administered to me through means other than a feeding tube unless, in my physician's opinion, this administration is medically contraindicated.

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

Signed.....

Date.....

Address.....

I know the person signing this document personally and I believe him or her to be of sound mind. I am not related to the person signing this document by blood, marriage or adoption, and am not entitled to and do not have a claim on any portion of the person's estate and am not otherwise restricted by law from being a witness.

Witness.....

Witness.....

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

History: 1983 a 202; 1985 a. 199; 1991 a. 84, 281.

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

Planning Ahead for Incapacity. Shapiro. Wis. Law. Aug. 1991.

Wisconsin's New Living Will Act. Gilbert. Wis. Law. March 1992.

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. (a) 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:

1. Participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this chapter.

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

3. 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.

(b) 1. No person who acts in good faith as a witness to a declaration under this chapter may be held civilly or criminally liable for participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this chapter.

2. Subdivision 1 does not apply to a person who acts as a witness in violation of s. 154.03 (1).

(2) EFFECT OF DECLARATION. The desires of a qualified patient who is competent supersede the effect of the declaration at all times. If a qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures or feeding tubes 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; 1991 a 84.

154.11 General provisions. (1) SUICIDE. The withholding or withdrawal of life-sustaining procedures or feeding tubes 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 or feeding tubes 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 to withhold or withdraw life-sustaining procedures or feeding tubes.

(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 or feeding tubes in the event that the person suffers from a terminal condition or is in a persistent vegetative state.

(5m) VALID DECLARATION. A declaration that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

(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.

(c) A declaration under s. 154.03 (2), 1989 stats., that is executed before, on or after December 11, 1991, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1989 stats.

History: 1983 a. 202; 1985 a. 199; 1991 a. 84

154.13 Filing declaration. (1) A declarant or an individual authorized by the declarant may, for a fee, file the declarant's declaration, for safekeeping, with the register in probate of the county in which the declarant resides.

(2) If a declarant or authorized individual has filed the declarant's declaration as specified in sub. (1), the following persons may have access to the declaration without first obtaining consent from the declarant:

(a) The individual authorized by the declarant.

(b) A health care provider who is providing care to the declarant.

(c) The court and all parties involved in proceedings for guardianship of the declarant under ch. 880, for emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.

(d) Any person under the order of a court for good cause shown.

(3) Failure to file a declaration under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

History: 1991 a. 281

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 or feeding tubes 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; 1991 a. 84