

State of Arkansas
76th General Assembly
Regular Session, 1987

SENATE BILL 631

By: Senator Dowd As engrossed 3-9-87
 As engrossed 3-12-87

"THE ARKANSAS RIGHTS OF THE TERMINALLY ILL ACT OR PERMANENTLY
UNCONSCIOUS ACT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DEFINITIONS. As used in this Act, unless the context otherwise requires:

- (1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.
- (2) "Declaration" means a writing executed in accordance with the requirements of Section 2(a).
- (3) "Health-care provider" means a person who is licensed, certified, or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession.
- (4) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or to maintain the patient in a condition of permanent unconsciousness.
- (5) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (6) "Physician" means an individual licensed to practice medicine in this State.
- (7) "Qualified patient" means a patient 18 or more years of age who has executed a declaration or appointed a health care proxy and who has been determined by the attending physician to be in a terminal condition or in a permanently unconscious state by the attending physician and another qualified physician who has examined the patient.
- (8) "State" means a state, territory, or possession of the United

States, the District of Columbia, or the Commonwealth of Puerto Rico.

(9) "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

(10) "Health care proxy" is a person 18 years old or older appointed by the patient as attorney-in-fact to make health care decisions including the withholding or withdrawal of life-sustaining treatment if a qualified patient, in the opinion of the attending physician, is permanently unconscious, incompetent or otherwise mentally or physically incapable of communication.

(11) "Permanently unconscious" means a lasting condition, indefinitely without change in which thought, feeling, sensations and awareness of self and environment are absent.

SECTION 2. DECLARATION RELATING TO USE OF LIFE-SUSTAINING TREATMENT.

(a) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals.

(b) A declaration may, but need not, be in the following form in the case where the patient has a terminal condition.

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Arkansas Rights of the Terminally Ill or permanently unconscious Act, to [withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.] [follow the instructions of _____ whom I appoint as my Health Care Proxy to decide whether life-sustaining treatment should be withheld or withdrawn].

Signed this ____ day of _____, _____.

Signature _____

Address _____

The declarant voluntarily signed this writing in my presence.

Witness _____

Address _____

Witness _____

Address _____

(c) A declaration may, but need not, be in the following form in the case where the patient is permanently unconscious:

"If I should become permanently unconscious I direct my attending physician, pursuant to the Arkansas Rights of the Terminally III or Permanently Unconscious Act, to [withhold or withdraw life-sustaining treatments that are no longer necessary to my comfort or to alleviate pain]. [follow the instructions of _____ whom I appoint as my health care proxy to decide whether life-sustaining treatment should be withheld or withdrawn].

Signed this _____ day of _____, 19____.

Signature _____

Address _____

The declarant voluntarily signed this writing in my presence.

Witness _____

Address _____

Witness _____

Address _____

(d) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

(e) In the case of a qualified patient, the patient's health proxy, in consultation with the attending physician, shall have the authority to make treatment decisions for the patient including the withholding or withdrawal of life-sustaining procedures."

SECTION 3. WHEN DECLARATION OPERATIVE. A declaration becomes operative when (i) it is communicated to the attending physician and (ii) the declarant is determined by the attending physician and another physician in consultation to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment. When the declaration becomes

operative, the attending physician and other health-care providers shall act in accordance with its provisions or comply with the transfer provisions of Section 7.

SECTION 4. REVOCATION OF DECLARATION. (a) A declaration may be revoked at any time and in any manner by the declarant, without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the attending physician or other health-care provider by the declarant or a witness to the revocation.

(b) The attending physician or other health-care provider shall make the revocation a part of the declarant's medical record.

SECTION 5. RECORDING DETERMINATION OF TERMINAL CONDITION AND DECLARATION. Upon determining that the declarant is in a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record.

SECTION 6. TREATMENT OF QUALIFIED PATIENT. (a) A qualified patient may make decisions regarding life-sustaining treatment as long as the patient is able to do so.

(b) This Act does not affect the responsibility of the attending physician or other health-care provider to provide treatment, including nutrition and hydration, for a patient's comfort, care, or alleviation of pain.

(c) The declaration of a qualified patient known to the attending physician to be pregnant must not be given effect as long as it is possible that the fetus could develop to the point of live birth with continued application of life-sustaining treatment.

SECTION 7. TRANSFER OF PATIENTS. An attending physician or other health-care provider who is unwilling to comply with this Act shall as promptly as practicable take all reasonable steps to transfer care of the declarant to another physician or health-care provider.

SECTION 8. IMMUNITIES. (a) In the absence of knowledge of the revocation of a declaration, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the declaration pur-

suant to the requirements of this Act.

(b) A physician or other health-care provider, whose actions under this Act are in accord with reasonable medical standards, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to those actions.

SECTION 9. PENALTIES. (a) A physician or other health-care provider who willfully fails to transfer in accordance with Section 7 is guilty of a Class A misdemeanor.

(b) A physician who willfully fails to record the determination of terminal condition in accordance with Section 5 is guilty of a Class A misdemeanor.

(c) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a Class A misdemeanor.

(d) An individual who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 4, is guilty of a Class D felony.

(e) An individual who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving health-care services is guilty of a Class D felony.

(f) A person who coerces or fraudulently induces another to execute a declaration under this Act is guilty of a Class D felony.

(g) The sanctions provided in this section do not displace any sanction applicable under other law.

SECTION 10. MISCELLANEOUS PROVISIONS. (a) Death resulting from the withholding or withdrawal of life-sustaining treatment pursuant to a declaration and in accordance with this Act does not constitute, for any purpose, a suicide or homicide.

(b) The making of a declaration pursuant to Section 2 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy or life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or

withdrawal of life-sustaining treatment from an insured qualified patient, notwithstanding any term to the contrary.

(c) A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving health-care services.

(d) This Act creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(e) This Act does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care.

(f) This Act does not require any physician or other health-care provider to take any action contrary to reasonable medical standards.

(g) This Act does not condone, authorize, or approve mercy-killing or euthanasia.

SECTION 11. WHEN HEALTH-CARE PROVIDER MAY PRESUME VALIDITY OF DECLARATION. In the absence of knowledge to the contrary, a physician or other health-care provider may presume that a declaration complies with this Act and is valid.

SECTION 12. RECOGNITION OF DECLARATION EXECUTED IN ANOTHER STATE. A declaration executed in another state in compliance with the law of that state or of this State is validly executed for purposes of this Act.

SECTION 13. EFFECT OF PREVIOUS DECLARATION. An instrument executed before the effective date of this Act which substantially complies with Section 2(a) must be given effect pursuant to the provision of this Act.

SECTION 14. WHO MAY EXECUTE WRITTEN REQUEST FOR ANOTHER. If any person is a minor, or an adult where a valid declaration does not exist and a health care proxy has not been designated and who, in the opinion of the attending physician is no longer able to make health care decisions, then such declaration may be executed in the same form on his/her behalf by the first of the following individuals or category of individuals who exist and are reasonably

available for consultation:

- (1) A legal guardian of the patient, if one has been appointed.
- (2) In the case of an unmarried patient under the age of 18, the parents of the patient.
- (3) The patient's spouse.
- (4) The patient's adult child, or if there is more than one, then a majority of the patient's adult children participating in the decision.
- (5) The parents of a patient over the age of 18.
- (6) The patient's adult sibling, or if there is more than one, then a majority of the patient's adult siblings participating in the decision.
- (7) Persons standing in loco parentis to the patient.
- (8) A majority of the patient's adult heirs at law who participate in the decision.

SECTION 15. SHORT TITLE. This Act may be cited as the Arkansas Rights of the Terminally Ill Act or permantly Unconscious Act.

SECTION 16. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 17. EFFECTIVE DATE. This Act takes effect on July 1, 1987.

SECTION 18. REPEAL. The following Acts and parts of Acts are repealed:

- (1) Act 879 of 1977
- (2) All laws and parts of laws in conflict with this Act.

/s/ Dowd

