

ENGROSSED HOUSE
BILL NO. 1893

BY: HAMILTON (Jeff), HUDSON,
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PELTIER, THOMPSON,
MAXEY, WIDENER and
STOTTLEMYRE of the HOUSE

and

HOBSON of the SENATE

(PUBLIC HEALTH AND SAFETY - OKLAHOMA RIGHTS OF
THE TERMINALLY ILL OR PERSISTENTLY UNCONSCIOUS
ACT - AMENDING 30 O.S. 1991, SECTION 3-119 -
OKLAHOMA GUARDIANSHIP AND CONSERVATORSHIP ACT -
CODIFICATION -

EFFECTIVE DATE)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3101.1 of Title 63, unless there
is created a duplication in numbering, reads as follows:

Sections 1 through 16 of this act shall be known and may be
cited as the "Oklahoma Rights of the Terminally Ill or Persistently
Unconscious Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3101.2 of Title 63, unless there
is created a duplication in numbering, reads as follows:

A. The purpose of the Oklahoma Rights of the Terminally Ill or
Persistently Unconscious Act is to:

1. Recognize the right of individuals to control some aspects of their own medical care and treatment, including but not limited to the right to decline medical treatment or to direct that it be withdrawn, even if death ensues;

2. Recognize that the right of individuals to control some aspects of their own medical treatment is protected by the Constitution of the United States and overrides any obligation the physician and other health care providers may have to render care or to preserve life and health;

3. Recognize that decisions concerning one's medical treatment involve highly sensitive, personal issues that do not belong in court, even if the individual is incapacitated, so long as a proxy decision-maker can make the necessary decisions based on the known intentions, personal views, or best interests of the individual. If evidence of the individual's wishes is sufficient, those wishes should control; if there is not sufficient evidence of the individual's wishes, the proxy's decisions should be based on the proxy's reasonable judgment about the individual's values and what the individual's wishes would be based upon those values. The proper role of the court is to settle disputes and to act as the proxy decision-maker of last resort when no other proxy is authorized by the individual or is otherwise authorized by law;

4. Restate and clarify the law to ensure that the individual's right to decide will continue to be honored during incapacity without court involvement; and

5. Encourage and support health care instructions by the individual in advance of incapacity and the delegation of decision-making powers to a health care proxy.

B. To be sure that the individual's health care instructions and proxy decision-making will be effective, the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act also includes necessary and appropriate protection for proxies and health care

providers who rely in good faith on the instructions of the individual and the decisions of an authorized proxy.

C. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act does not condone, authorize, or approve mercy killing, assisted suicide, or euthanasia.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act:

1. "Advance directive for health care" means any writing executed in accordance with the requirements of Section 4 of this act and may include a living will, the appointment of a health care proxy, or both such living will and appointment of a proxy;

2. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient;

3. "Declarant" means any individual who has issued an advance directive according to the procedure provided for in Section 4 of this act;

4. "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;

5. "Health care proxy" is an individual eighteen (18) years old or older appointed by the declarant as attorney-in-fact to make health care decisions including but not limited to the withholding or withdrawal of life-sustaining treatment if a qualified patient, in the opinion of the attending physician and another physician, is persistently unconscious, incompetent, or otherwise mentally or physically incapable of communication;

6. "Life-sustaining treatment" means any medical procedure or intervention, including but not limited to the artificial

administration of nutrition and hydration if the declarant has specifically authorized the withholding and withdrawal of artificially administered nutrition and hydration, 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 persistent unconsciousness. The term "life-sustaining treatment" shall not include the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain nor the normal consumption of food and water;

7. "Persistently unconscious" means an irreversible condition, as determined by the attending physician and another physician, in which thought and awareness of self and environment are absent;

8. "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;

9. "Physician" means an individual licensed to practice medicine in this state;

10. "Qualified patient" means a patient eighteen (18) years of age or older who has executed an advance directive and who has been determined to be in a terminal condition or in a persistently unconscious state by the attending physician and another physician who have examined the patient;

11. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

12. "Terminal condition" means an incurable and irreversible condition that, even with the administration of life-sustaining treatment, will, in the opinion of the attending physician and another physician, result in death within six (6) months.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An individual of sound mind and eighteen (18) years of age or older may execute at any time an advance directive governing the withholding or withdrawal of life-sustaining treatment. The advance directive shall be signed by the declarant and witnessed by two individuals who are eighteen (18) years of age or older.

B. An advance directive shall be in substantially the following form:

Advance Directive for Health Care

I, _____, being of sound mind and eighteen (18) years of age or older, willfully and voluntarily make known my desire, by my instructions to others through my living will, or by my appointment of a health care proxy, or both, that my life shall not be artificially prolonged under the circumstances set forth below. I thus do hereby declare:

I. Living Will

a. If my attending physician and another physician determine that I am no longer able to make decisions regarding my medical treatment, I direct my attending physician and other health care providers, pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, to withhold or withdraw treatment from me under the circumstances I have indicated below by my signature. I understand that I will be given treatment that is necessary for my comfort or to alleviate my pain.

b. If I have a terminal condition:

(1) I direct that life-sustaining treatment shall be withheld or withdrawn if such treatment would only prolong my process of dying, and if my attending physician and

another physician determine that I have an incurable and irreversible condition that even with the administration of life-sustaining treatment will cause my death within six (6) months. _____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) that will only prolong the process of dying from an incurable and irreversible condition is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition and hydration will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding or withdrawal of artificially administered nutrition (food) and hydration (water). _____ (signature)

(3) I direct that (add other medical directives, if any)

. _____ (signature)

c. If I am persistently unconscious:

(1) I direct that life-sustaining treatment be withheld or withdrawn if such treatment will only serve to maintain me in an irreversible condition, as determined by my attending physician and another physician, in which thought and awareness of self and environment are absent.

_____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) for individuals who have become persistently unconscious is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition

and hydration will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding or withdrawal of artificially administered nutrition (food) and hydration (water). _____

(signature)

(3) I direct that (add other medical directives, if any)

_____ (signature)

II. My Appointment of My Health Care Proxy

a. If my attending physician and another physician determine that I am no longer able to make decisions regarding my medical treatment, I direct my attending physician and other health care providers pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act to follow the instructions of _____, whom I appoint as my health care proxy. If my health care proxy is unable or unwilling to serve, I appoint _____ as my alternate health care proxy with the same authority. My health care proxy is authorized to make whatever medical treatment decisions I could make if I were able, except that decisions regarding life-sustaining treatment can be made by my health care proxy or alternate health care proxy only as I indicate in the following sections.

b. If I have a terminal condition:

(1) I authorize my health care proxy to direct that life-sustaining treatment be withheld or withdrawn if such treatment would only prolong my process of dying and if my attending physician and another physician determine that I have an incurable and irreversible condition that even with

the administration of life-sustaining treatment will cause my death within six (6) months. _____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition (food) or hydration (water) will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding or withdrawal of artificially administered nutrition and hydration. _____ (signature)

(3) I authorize my health care proxy to (add other medical directives, if any)

_____ (signature)

c. If I am persistently unconscious:

(1) I authorize my health care proxy to direct that life-sustaining treatment be withheld or withdrawn if such treatment will only serve to maintain me in an irreversible condition, as determined by my attending physician and another physician, in which thought and awareness of self and environment are absent. _____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition (food) and hydration (water) will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding and withdrawal of artificially administered nutrition and hydration. _____
(signature)

(3) I authorize my health care proxy to (add other medical directives, if any)

_____.

_____ (signature)

III. Conflicting Provision

I understand that if I have completed both a living will and have appointed a health care proxy, and if there is a conflict between my health care proxy's decision and my living will, my living will shall take precedence unless I indicate otherwise.

_____ (signature)

IV. Other Provisions

a. I understand that if I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this advance directive shall have no force or effect during the course of my pregnancy.

b. In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this advance directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment including, but not limited to, the administration of any life-sustaining procedures, and I accept the consequences of such refusal.

c. This advance directive shall be in effect until it is revoked.

d. I understand that I may revoke this advance directive at any time.

e. I understand and agree that if I have any prior directives, and if I sign this advance directive, my prior directives are revoked.

f. I understand the full importance of this advance directive and I am emotionally and mentally competent to make this advance directive.

Signed this _____ day of _____, 19 __.

(Signature)

City, County and State of Residence

This advance directive was signed in my presence.

(Signature of Witness)

(Address)

(Signature of Witness)

(Address)

C. A physician or other health care provider who is furnished the original or a photocopy of the advance directive shall make it a part of the declarant's medical record and, if unwilling to comply with the advance directive, promptly so advise the declarant.

D. In the case of a qualified patient, the patient's health care 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 if so indicated in the patient's advance directive.

E. A person executing an advanced directive appointing a health care proxy who may not have an attending physician for reasons based on established religious beliefs or tenets may designate an individual other than the designated health care proxy, in lieu of an attending physician and other physician, to determine the lack of decisional capacity of the person. Such designation shall be

specified and included as part of the advanced directive executed pursuant to the provisions of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An advance directive becomes operative when:

1. It is communicated to the attending physician; and

2. The declarant is no longer able to make decisions regarding administration of life-sustaining treatment. When the advance directive becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the provisions of Section 9 of this act.

B. In the event more than one valid advance directive has been executed and not revoked, the last advance directive so executed shall be construed to be the last wishes of the declarant and shall become operative pursuant to subsection A of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An advance directive may be revoked in whole or in part 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

The determination of the attending physician and another physician that the patient is a qualified patient shall become a part of the patient's medical record.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A qualified patient may make decisions regarding life-sustaining treatment as long as the patient is able to do so.

B. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act does not affect the responsibility of the attending physician or other health care provider to provide for a patient's comfort or alleviation of pain.

C. The advance directive of a qualified patient known to the attending physician to be pregnant shall not be operative during the course of the pregnancy. If it is not known if the patient is pregnant, the said physician shall, where appropriate considering age and other relevant factors, determine whether or not the patient is pregnant.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

An attending physician or other health care provider who is unwilling to comply with the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall as promptly as practicable take all reasonable steps to arrange care of the declarant by another physician or health care provider when the declarant becomes a qualified patient.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In the absence of knowledge of the revocation of an advance directive, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the advance directive pursuant to the requirements of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

B. A physician or other health care provider, whose actions under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious 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.

C. An individual designated as a health care proxy, pursuant to Section 4 of this act, to make health care decisions for a declarant and whose decisions regarding the declarant are made in good faith pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, is not subject to criminal or civil liability, or discipline for unprofessional conduct with respect to those decisions.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A physician or other health care provider who willfully fails to arrange the care of a patient in accordance with Section 9 of this act shall be guilty of unprofessional conduct.

B. A physician who willfully fails to record the determination of the patient's condition in accordance with Section 7 of this act shall be guilty of unprofessional conduct.

C. Any person who willfully conceals, cancels, defaces, alters, or obliterates the advance directive of another without the declarant's consent, or who falsifies or forges a revocation of the advance directive of another shall be, upon conviction, guilty of a felony.

D. A person who in any way falsifies or forges the advance directive of another, or who willfully conceals or withholds personal knowledge of a revocation as provided in Section 6 of this act shall be, upon conviction, guilty of a felony.

E. A person who requires or prohibits the execution of an advance directive as a condition for being insured for, or

receiving, health care services shall be, upon conviction, guilty of a felony.

F. A person who coerces or fraudulently induces another to execute an advance directive or revocation shall be, upon conviction, guilty of a felony.

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not constitute, for any purpose, a suicide or homicide.

B. The making of an advance directive pursuant to Section 4 of this act shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor shall it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity shall not be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured qualified patient, regardless of any term of the policy or annuity to the contrary.

C. A person shall not prohibit or require the execution of an advance directive as a condition for being insured for, or receiving, health care services.

D. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act creates no presumption concerning the intention of an individual who has revoked or has not executed an advance directive with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event the individual becomes persistently unconscious or in a terminal condition.

E. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall 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. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not require any physician or other health care provider to take any action contrary to reasonable medical standards.

G. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia.

H. Failure to designate a health care proxy in accordance with Section 4 of this act shall not be interpreted to invalidate the authority of a health care proxy to make life-sustaining treatment decisions if otherwise authorized by law.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

In the absence of knowledge to the contrary, a physician or other health care provider may presume that an advance directive complies with the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act and is valid.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

Execution of a formal document by an individual, which provides for the withholding or withdrawal of life-sustaining treatment for that individual or for the appointment of another to withhold or withdraw life-sustaining treatment, executed in another state in compliance with the law of that state or of this state is valid for

purposes of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act to the extent the formal document does not exceed authorizations allowed under the laws of this state.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any directive to a physician executed before the effective date of this act shall be valid until revoked and shall have the same force and effect as if made pursuant to this act whether or not the person who executed it was in a terminal condition at the time of execution.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

An individual making life-sustaining treatment decisions pursuant to the provisions of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act for a declarant shall make such decisions based on the known intentions, personal views and best interests of the declarant. If evidence of the declarant's wishes is sufficient, those wishes shall control. If there is not sufficient evidence of the wishes of the declarant, the decisions shall be based on the reasonable judgment of the individual so deciding about the values of the declarant and what the wishes of the declarant would be based upon those values.

SECTION 17. AMENDATORY 30 O.S. 1991, Section 3-119, is amended to read as follows:

Section 3-119. A guardian shall have no powers except as provided by the Oklahoma Statutes or given to him in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

1. No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures

as defined by ~~Section 3102 of Title 63 of the Oklahoma Statutes~~ the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act from the ward, except:

- a. with specific authorization of the court having jurisdiction over the guardianship proceedings. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment, or
- b. as authorized by an advance directive executed pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

2. No guardian or court having jurisdiction of the guardianship proceeding shall have the power to consent on behalf of the ward or order the consent on behalf of the ward to the termination or relinquishment of parental rights of the ward.

3. Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or behavioral experiment, except with specific authorization of the court having jurisdiction of the guardianship proceeding.

4. No guardian shall have the power to prohibit the marriage or divorce of a ward except with specific authorization of the court having jurisdiction of the guardianship proceeding.

5. No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed pursuant to the laws of this state absent formal commitment proceedings in which the ward has independent counsel.

SECTION 18. REPEALER 63 O.S. 1991, Sections 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110 and 3111, are hereby repealed.

SECTION 19. This act shall become effective September 1, 1992.

Passed the House of Representatives the 4th day of March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate