

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1391

BY: HAMILTON (Jeff)

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING SECTION 2, CHAPTER 64, O.S.L. 1987, AS LAST AMENDED BY SECTION 1, CHAPTER 268, O.S.L. 1990, SECTION 2, CHAPTER 268, O.S.L. 1990 AND SECTION 7, CHAPTER 64, O.S.L. 1985, AS AMENDED BY SECTION 6, CHAPTER 268, O.S.L. 1990 (63 O.S. SUPP. 1990, SECTION 3102, 3103 AND 3107), WHICH RELATE TO THE OKLAHOMA NATURAL DEATH ACT; MODIFYING DEFINITIONS; MODIFYING EFFECTIVENESS OF DIRECTIVE; REMOVING CERTAIN FORM INFORMATION; MAKING DIRECTIVE CONCLUSIVELY PRESUMED TO BE DIRECTIONS OF PATIENT; PROVIDING FOR USE OF OTHER DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 2, Chapter 64, O.S.L. 1987, as last amended by Section 1, Chapter 268, O.S.L. 1990 (63 O.S. Supp. 1990, Section 3102), is amended to read as follows:

Section 3102. As used in the Oklahoma Natural Death Act:

1. "Attending physician" means the physician who has primary responsibility for the treatment and care of the declarant. The attending physician may be selected by the declarant or assigned by the physician selected by the declarant;

2. "Declarant" means any person who has issued a directive according to the procedure provided for in Section 3103 of this title in contemplation of death;

3. "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section 3103 of this title;

4. "Life-sustaining procedure" means any medical procedure or intervention, including, but not limited to, the invasive administration of nourishment and hydration if specifically authorized, which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital bodily function. When applied to a qualified patient, a life-sustaining procedure would serve only to artificially prolong the moment of death when in the judgment of the attending physician, as noted in the medical records of the qualified patient, death is imminent ~~whether or not~~ without the use of such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain nor the normal consumption of food and water;

5. "Person" means any person twenty-one (21) years of age or older;

6. "Physician" means a physician or surgeon licensed by the State Board of Medical Licensure and Supervision or State Board of Osteopathy;

7. "Qualified patient" means a declarant who has been personally and independently examined by each of two physicians and who has been diagnosed and certified in writing by each of the two physicians to be afflicted with a terminal condition;

8. "Terminal condition" means an incurable and irreversible condition caused by injury, disease or illness which, ~~even with~~ without the administration of any life-sustaining procedure and within reasonable medical judgment, will result in the death of a

person from that condition or a complication arising from that condition within hours or days; and

9. "Health care provider" means a person twenty-one (21) years of age or older 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.

SECTION 2. AMENDATORY Section 3, Chapter 64, O.S.L. 1985, as amended by Section 2, Chapter 268, O.S.L. 1990 (63 O.S. Supp. 1990, Section 3103), is amended to read as follows:

Section 3103. A. Any person may execute a directive at any time for withholding or withdrawal of life-sustaining procedures in the event of a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses.

B. Witnesses to the execution of the directive shall not be:

1. Under twenty-one (21) years of age;
2. Related to the declarant by blood or marriage;
3. Financially responsible for the medical care of the declarant;

4. Entitled to any portion of the estate of the declarant pursuant to any will of the declarant, any codicil thereto, or by operation of law;

5. The attending physician;

6. An employee of the attending physician or an employee of a health care facility in which the declarant is a patient;

7. A patient in a health care facility in which the declarant is a patient; or

8. A person who, at the time of the execution of the directive, has a claim against any portion of the estate of the declarant.

C. The signature of the declarant shall be acknowledged.

Witnesses shall subscribe and swear to having witnessed the signing of the directive before a notary public.

D. The directive shall be substantially in the following form, but may include other specific directions. If any of the other specific directions are held invalid, the invalidity shall not affect other directions of the directive which can be given effect without the invalid direction.

DIRECTIVE TO PHYSICIANS

Directive made this _____ day of _____ (month, year).

I, _____, being of sound mind and twenty-one (21) years of age or older, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable and irreversible condition caused by injury, disease or illness certified to be a terminal condition by two physicians, I direct that life-sustaining procedures be withheld or withdrawn and that I be permitted to die naturally, if the application of life-sustaining procedures would only serve to artificially prolong the process of my dying and my attending physician determines that my death will occur within hours or days, ~~whether or not~~ without the use of life-sustaining procedures ~~are utilized~~;

2. I understand that I am authorizing the withdrawal of any medical procedure or intervention that will only prolong the process of dying, when I have been diagnosed as having a terminal condition (If declarant does not wish to authorize the withdrawal of any specific medical procedure or intervention specific directions shall be specified in the directive);

3. I understand that when I have been diagnosed as having a terminal condition, the subject of the artificial administration of food and water that will only prolong the process of dying is of particular importance. Therefore, unless I sign this paragraph, I

am not authorizing the withholding of nutrition or hydration (food or water):

a. I wish not to have artificial administration of food by tube or intravenous feeding,

(signed)

b. I wish not to have artificial administration of water by tube or intravenously,

(signed)

4. I understand that if I have given no specific directive concerning the artificial administration of food and water, it shall be presumed that I wish to receive nutrition and hydration to a degree sufficient to sustain life;

5. In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this 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 accept the consequences of such refusal;

6. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy;

~~7. I have been diagnosed and notified as having a terminal condition by _____, M.D. or D.O., whose address is _____, and whose telephone number is _____. I understand that if I have not filled in the name and address of the physician, it shall be presumed that I did not have a terminal condition when I made out this directive;~~

~~8. This directive shall be in effect until it is revoked;~~

~~9.~~ 8. I understand the full import of this directive and I am emotionally and mentally competent to make this directive; and

~~10.~~ 9. I understand that I may revoke this directive at any time.

Signed _____

City, County and State of Residence _____

The declarant is personally known to me and I believe said declarant to be of sound mind. I am twenty-one (21) years of age or older, I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the estate of the declarant upon the death of said declarant, nor am I the attending physician of the declarant or an employee of the attending physician or a health care facility in which the declarant is a patient, or a patient in the health care facility in which the declarant is a patient, nor am I financially responsible for the medical care of the declarant, or any person who has a claim against any portion of the estate of the declarant upon the death of the declarant.

Witness _____

Witness _____

State of Oklahoma

County of _____

Before me, the undersigned authority, on this day personally appeared _____ (declarant), _____ (witness) and _____ (witness) whose names are subscribed to the foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the declarant declared to me and to the said witnesses in my presence that said instrument is his or her "Directive to Physicians", and that the declarant has willingly and voluntarily made and executed it as the free act and deed of the declarant for the purposes therein expressed.

The foregoing instrument was acknowledged before me this _____ day of _____, 19__.

Signed _____

Notary Public in and for

_____ County, Oklahoma

My Commission Expires _____ day of _____, 19__.

SECTION 3. AMENDATORY Section 7, Chapter 64, O.S.L. 1985, as amended by Section 6, Chapter 268, O.S.L. 1990 (63 O.S. Supp. 1990, Section 3107), is amended to read as follows:

Section 3107. A. When the declarant is not mentally competent and able to so designate pursuant to subsection B of this section, the directive shall be presumed, unless revoked, to be the directions of the declarant regarding withholding or withdrawal of life-sustaining procedures. Such presumption may be relied upon unless inconsistent facts are known.

B. If the declarant is mentally competent and able to so designate, prior to the withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall verify with the declarant that the directive and all steps proposed by the attending physician to be undertaken are in accord with the desires of the declarant.

~~C. If the declarant was a qualified patient prior to executing or re-executing the directive, the~~ 1. The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures.

2. No physician or health care professional acting under the direction of a physician shall be civilly or criminally liable for failing to comply with the directive of a qualified patient pursuant to this subsection.

3. An attending physician who refuses to comply with the directive of a qualified patient shall transfer the qualified patient to another physician.

4. A failure by a physician to comply with the directive of a qualified patient pursuant to this subsection may constitute unprofessional conduct if the physician refuses to make the necessary arrangements or fails to transfer the qualified patient to another physician who will comply with the directive of the qualified patient.

D. ~~If the declarant becomes a qualified patient subsequent to executing the directive and has not subsequently re-executed the directive,~~ the 1. The attending physician may give weight to ~~the~~ any directive or other document not issued in compliance with the Oklahoma Natural Death Act as evidence of the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors such as information from the affected family or the nature of the illness, injury, or disease of the patient in determining whether the totality of circumstances known to the attending physician justifies effectuating the directive or other document.

2. No physician and no health care professional acting under the direction of a physician shall be civilly or criminally liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

E. 1. After the diagnosis of a terminal condition of the declarant, an attending physician who has been notified of the existence of a directive shall, without delay, take the necessary steps to provide for written certification and confirmation of the terminal condition of the declarant so that the declarant may be deemed a qualified patient pursuant to the Oklahoma Natural Death Act. Confirmation of the terminal condition shall be made by two (2) physicians. One physician shall be the attending physician and the other shall be chosen by the patient or the attending physician.

2. The written certification of the diagnosis of a terminal condition shall be signed by the two physicians, dated, and filed

with the declarant's medical records, and one copy with the hospital or nursing facility where the qualified patient is located.

3. The failure of a physician to provide written certification of the terminal condition of the declarant pursuant to this subsection or to transfer the declarant to another physician who will so certify the condition of the declarant may constitute unprofessional conduct.

F. No physician or health care provider acting under the direction of a physician shall be civilly or criminally liable for failing to comply with the directive of a qualified patient pursuant to this subsection. An attending physician who refuses to comply with the directive of a qualified patient shall transfer the qualified patient to another physician. Failure by an attending physician to either comply with a directive of a qualified patient pursuant to this subsection or to make good faith efforts to transfer a qualified patient to another physician who will comply with such directive may constitute unprofessional conduct.

SECTION 4. This act shall become effective September 1, 1991.

43-1-5264 KSM