

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1530

BY: HAMILTON (Jeff)

AS INTRODUCED

AN ACT RELATING TO PROBATE PROCEDURE; AMENDING SECTION 2, CHAPTER 293, O.S.L. 1988 AND SECTION 7, CHAPTER 293, O.S.L. 1988 (58 O.S. SUPP. 1990, SECTIONS 1072 AND 1077), WHICH RELATE TO THE UNIFORM DURABLE POWER OF ATTORNEY ACT; ADDING TO POWERS AND DUTIES OF ATTORNEY-IN-FACT; PROVIDING CERTAIN CONTENTS; MODIFYING CONSTRUCTION OF ACT; AMENDING SECTION 4, CHAPTER 40, O.S.L. 1987, AS AMENDED BY SECTION 9, CHAPTER 268, O.S.L. 1990 AND SECTION 5, CHAPTER 40, O.S.L. 1987 (63 O.S. SUPP. 1990, SECTIONS 3080.4 AND 3080.5), WHICH RELATE TO THE HYDRATION AND NUTRITION FOR INCOMPETENT PATIENTS ACT; MAKING CERTAIN DURABLE POWER OF ATTORNEY SATISFYING ACT; ADDING TO POWERS OF COURTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 2, Chapter 293, O.S.L. 1988 (58 O.S. Supp. 1990, Section 1072), is amended to read as follows:

Section 1072. A. A durable power of attorney is a power of attorney by which a principal designates another his

attorney-in-fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

B. In addition to other acts authorized by a principal pursuant to a durable power of attorney as authorized by the provisions of the Uniform Durable Power of Attorney Act, the principal may specifically authorize the attorney-in-fact to make decisions relating to the principal's medical care and treatment in the event the principal becomes mentally incapacitated to make those decisions. The decisions may include but not be limited to the withholding or withdrawal of life-sustaining procedures as such term is defined by the Oklahoma Natural Death Act. Any durable power of attorney authorizing decisions regarding the withdrawal or withholding of life-sustaining procedures shall include, substantially, the following language:

1. 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 principal does not wish to authorize the withdrawal of any specific medical procedure or intervention specific directions shall be specified in the durable power of attorney);

2. 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)

3. I understand that if I have given no specific direction 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;

SECTION 2. AMENDATORY Section 7, Chapter 293, O.S.L. 1988 (58 O.S. Supp. 1990, Section 1077), is amended to read as follows:

Section 1077. The Uniform Durable Power of Attorney Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it, and shall be construed to include, but not be limited to, the power to make decisions on behalf of the principal regarding any medical or other professional care, counsel, treatment, or service of or to the principal by a licensed or certified professional person or institution engaged in the practice of, or providing, a healing art.

SECTION 3. AMENDATORY Section 4, Chapter 40, O.S.L. 1987, as amended by Section 9, Chapter 268, O.S.L. 1990 (63 O.S. Supp. 1990, Section 3080.4), is amended to read as follows:

Section 3080.4 A. The presumption pursuant to Section 3080.3 of this title shall not apply if:

1. the attending physician of the incompetent patient knows by clear and convincing evidence that the patient, when competent and

with a specific illness or injury, decided on the basis of information sufficient to constitute informed consent that artificially administered hydration or artificially administered nutrition should be withheld or withdrawn from him. A directive executed pursuant to the Oklahoma Natural Death Act specifically authorizing the withholding of nutrition or hydration shall be deemed to satisfy the provisions of this paragraph. A durable power of attorney issued pursuant to the provisions of Section 1072 of Title 58 of the Oklahoma Statutes shall be deemed to satisfy the provisions of this paragraph; or

2. in the reasonable medical judgment of the incompetent patient's attending physician and a second consulting physician, artificially administered hydration or artificially administered nutrition will itself cause severe, intractable, and long-lasting pain to the incompetent patient or such nutrition or hydration is not medically possible; or

3. in the reasonable medical judgment of the incompetent patient's attending physician and a second consulting physician:

- a. the incompetent patient is chronically and irreversibly incompetent,
- b. the incompetent patient is in the final stage of a terminal illness or injury, and
- c. the death of the incompetent patient is imminent.

B. Hydration or nutrition may not be withheld or withdrawn pursuant to paragraph 3 of subsection A of this section if this would result in death from dehydration or starvation rather than from the underlying terminal illness or injury.

SECTION 4. AMENDATORY Section 5, Chapter 40, O.S.L. 1987 (63 O.S. Supp. 1990, Section 3080.5), is amended to read as follows:

Section 3080.5 A. Notwithstanding any other provision of law, no person and no health care facility shall be required to participate in or provide facilities for medical treatment or care

of an incompetent patient who is to die as the result of dehydration or starvation.

B. The law of this state shall not be construed to permit withdrawal or withholding of medical treatment, care, nutrition or hydration from an incompetent patient because of the mental disability or mental status of that patient.

C. No guardian, public or private agency, ~~court~~, or any other person shall have the authority to make a decision on behalf of an incompetent patient to withhold or withdraw hydration or nutrition from said patient except in the circumstances and under the conditions provided for in paragraph 3 of subsection A of Section 4 3080.4 of this ~~act~~ title.

SECTION 5. This act shall become effective September 1, 1991.

43-1-5363

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