SHORT TITLE: Probate procedure; adding statutory reference; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 546 By: Hendrick

AS INTRODUCED

An Act relating to probate procedure; amending 58 O.S. 1991, Section 239, which relates to petitions and consents, and 63 O.S. 1991, Section 3101.4, which relates to advance directives; requiring certain determination; allowing certain service; clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 58 O.S. 1991, Section 239, is amended to read as follows:

Section 239. A. After the appointment of the personal representative, and, provided that a determination of the identities of the heirs, devisees and legatees of the decedent has been made pursuant to the provisions of Section 240 of Title 58 of the Oklahoma Statutes, and upon the filing of a petition or application, said petition to be accompanied by ~~verified~~ acknowledged, written consents by all heirs, devisees~~,~~ and legatees, other than contingent devisees and legatees, and persons authorized to act on behalf of any heir, devisee or legatee under any legal disability, the court may enter an order:

1. Authorizing the personal representative to sell, grant, lease, mortgage or encumber any real or personal property including mineral interests, and to execute and issue deeds, leases, bills of sale, notes, mortgages, easements and other documents of conveyance,

without further judicial authorization or a return of sale or confirmation of such sale or transaction. Any sale or transaction so authorized shall pass title to the purchaser without being confirmed by the court, notwithstanding any statutory provision to the contrary; or

2. Waiving the filing of any accounting specified in the consents of the persons herein named, or waiving the necessity for presentation to the court for approval of any such accounting.

B. Waivers or consents may be withdrawn at any time and thereafter all acts shall be in accordance with regular statutory procedures. A withdrawal shall be effected by filing a written statement of withdrawal with the court clerk and by ~~personally~~ serving a certified copy on the personal representative <u>or the attorney for the personal representative by certified mail</u>.

C. Notwithstanding the foregoing, if the petition or application is filed after three (3) months from the date of admission of the will to probate, and no appeal of the admission of the will is pending nor has any contest to admission of the will to probate been filed after admission of the will to probate, and if the will contains a residuary disposition clause, then the consents of heirs~~,~~ who are neither devisees or legatees~~,~~ shall not be required.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 3101.4, is amended to read as follows:

Section 3101.4 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 who are not legatees, devisees or heirs at law.

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 3. This act shall become effective September 1, 1993.

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