

CHAPTER 870

H.B. No. 403

An Act relating to the withholding or withdrawal of life-sustaining procedures from a terminally ill patient.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Natural Death Act (Article 4590h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. In this Act:

(1) "Attending physician" means the physician [selected by, or assigned by the physician selected by, the patient] who has primary responsibility for the treatment and care of the patient.

(2) "Declarant" means a person who has executed or issued a directive under this Act.

(3) "Directive" means:

(A) a [written] document voluntarily executed by the declarant as prescribed by [in accordance with the requirements of] Section 3(a) [3] of this Act;

(B) a nonwritten directive issued by the declarant as prescribed by Section 3(b) of this Act; or

(C) a document executed as prescribed by Section 4D of this Act. [The directive, or a copy of the directive, shall be made part of the patient's medical records.]

(4) [(3)] "Life-sustaining procedure" means a medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, noted in the qualified patient's medical records, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to provide comfort or care or alleviate pain.

(5) [(4)] "Physician" means a physician and surgeon licensed by the Texas State Board of Medical Examiners or a properly credentialed physician holding a commission in the uniformed services of the United States who is serving on active duty in this state.

(6) [(5)] "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, [and the other shall be chosen by the patient or the attending physician,] who have [each] personally examined the patient.

(7) [(6)] "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serves only to postpone the moment of death of the patient.

SECTION 2. Section 3, Natural Death Act (Article 4590h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) Any competent adult person may, at any time, execute a directive for the 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 not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant on his decease under any will of the declarant or codicil thereto or by operation of law. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, a patient in a health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The two witnesses to the declarant's signature shall sign the directive.

(b) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication. The declarant must issue the directive in the presence of the attending physician and two witnesses. The witnesses must possess the same qualifications as are required by Subsection (a) of this section. The physician shall make the fact of the existence of the directive a part of the declarant's medical record and the witnesses shall sign said entry in the declarant's medical record.

(c) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is comatose, incompetent, or otherwise mentally or physically incapable of communication, another person may notify the physician of the existence of a written directive. The physician shall make the directive a part of the declarant's medical record.

(d) A written [The] directive may [shall] be in the following form:

"DIRECTIVE TO PHYSICIANS

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

"I _____, being of sound mind, 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 condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

"2. In the absence of my ability to give directions regarding the use of such 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 and accept the consequences from such refusal.

"3. 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.

"4. [~~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 physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

~~"5.~~ This directive shall be in effect until it is revoked.

"5. [~~6.~~] I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"6. [~~7.~~] I understand that I may revoke this directive at any time.

"Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate on his decease, nor am I the attending physician of the declarant or an employee of the attending physician or a health facility in which the declarant is a patient, or a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease.

"Witness _____

"Witness _____"

(e) The directive may include other directions, including a designation of another person to make a treatment decision in accordance with Section 4A of this Act for the declarant if the declarant is comatose, incompetent, or otherwise mentally or physically incapable of communication.

SECTION 3. The Natural Death Act (Article 4590h, Vernon's Texas Civil Statutes) is amended by adding Sections 4A, 4B, 4C, 4D, and 4E to read as follows:

Sec. 4A. The desire of a qualified patient who is competent shall at all times supersede the effect of a directive. If an adult qualified patient is comatose, incompetent, or otherwise mentally or physically incapable of communication and has issued a directive under this Act without designating a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the present desire of the patient.

Sec. 4B. If an adult qualified patient who has designated a person to make a treatment decision as authorized by Section 3(e) of this Act is comatose, incompetent, or otherwise mentally or physically incapable of communication, the attending physician and the person designated by the patient may make a treatment decision to withhold or withdraw life-sustaining procedures from the patient.

Sec. 4C. (a) If an adult qualified patient is comatose, incompetent, or otherwise mentally or physically incapable of communication, and the person has not issued a directive under this Act, the attending physician and the legal guardian of the patient may make a treatment decision that may, based on knowledge of what the patient would desire, if known, include a decision to withhold or withdraw life-sustaining procedures from the patient.

(b) If the patient does not have a legal guardian, the attending physician and at least two, if available, of the following categories of persons, in the following priority, may make a treatment decision that may, based on knowledge of what the patient would desire, if known, include a decision to withhold or withdraw life-sustaining procedures:

- (1) the patient's spouse;*
- (2) a majority of the patient's reasonably available adult children;*
- (3) the patient's parents; and*
- (4) the patient's nearest living relative.*

(c) A treatment decision made under Subsection (b) of this section must be made in the presence of at least two witnesses who possess the same qualifications as are required by Section 3(a) of this Act.

(d) The fact that an adult qualified patient has not issued or executed a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining procedures.

Sec. 4D. (a) The following persons may execute a directive on behalf of a qualified patient who is under 18 years of age:

- (1) the patient's spouse, if the spouse is an adult;*
- (2) the patient's parents; or*
- (3) the patient's legal guardian.*

(b) The desire of a qualified patient who is under 18 years of age and who is competent shall at all times supersede the effect of a directive executed in accordance with this section.

Sec. 4E. Life-sustaining procedures may not be withheld or withdrawn under this Act from a patient who is pregnant.

SECTION 4. Section 7, Natural Death Act (Article 4590h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) ~~Before [Prior to effecting a] withholding or withdrawing [withdrawal of] life-sustaining procedures from a qualified patient under this Act [pursuant to the directive], the attending physician shall determine [that the directive complies with the form of the directive set out in Section 3 of this Act, and, if the patient is mentally competent,] that [the directive and] all steps proposed [by the attending physician] to be undertaken are in accord with the provisions of this Act and the existing desires of the qualified patient [and are communicated to the patient].~~

~~(b) [If the declarant was a qualified patient prior to executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life/sustaining procedures.] No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of a [the] qualified patient [pursuant to this subsection. A failure by a physician to effectuate 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 take the necessary steps to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient]. If the attending physician refuses to comply with a directive or treatment decision, the physician shall make a reasonable effort to transfer the patient to another physician.~~

~~(c) An attending physician who has been notified of the existence of a directive executed under this Act shall, on diagnosis of a terminal condition, provide for certification of the patient as a qualified patient [If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently reexecuted the directive, the attending physician may give weight to the directive as evidence of the patient's directions 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 patient's illness, injury, or disease, in determining whether the totality of circumstances known to the attending physician justifies effectuating the directive. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection].~~

SECTION 5. This Act takes effect September 1, 1985.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 13, 1985, by the following vote: Yeas 80, Nays 62, 1 present, not voting; House concurred in Senate amendments to H.B. No. 403 on May 26, 1985, by a non-record vote.; passed by the Senate, with amendments, on May 25, 1985, by a viva-voce vote.

Filed: June 15, 1985, without signature.

Effective: September 1, 1985