

## CHAPTER 154

## ADVANCE DIRECTIVES

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## SUBCHAPTER I

## DEFINITIONS

**154.01 Definitions.** In this chapter:

(1) “Attending physician” means a physician licensed under ch. 448 who has primary responsibility for the treatment and care of the patient.

(2g) “Department” means the department of health services.

(3) “Health care professional” means a person licensed, certified or registered under ch. 441, 448 or 455.

(4) “Inpatient health care facility” has the meaning provided under s. 50.135 (1) and includes community–based residential facilities, as defined in s. 50.01 (1g).

(5) “Life–sustaining procedure” means any medical procedure or intervention that, in the judgment of the attending physician, would serve only to prolong the dying process but not avert death when applied to a qualified patient. “Life–sustaining procedure” includes assistance in respiration, artificial maintenance of blood pressure and heart rate, blood transfusion, kidney dialysis and other similar procedures, but does not include:

(a) The alleviation of pain by administering medication or by performing any medical procedure.

(b) The provision of nutrition or hydration.

(5m) “Persistent vegetative state” means a condition that reasonable medical judgment finds constitutes complete and irreversible loss of all of the functions of the cerebral cortex and results in a complete, chronic and irreversible cessation of all cognitive functioning and consciousness and a complete lack of behavioral responses that indicate cognitive functioning, although autonomic functions continue.

(8) “Terminal condition” means an incurable condition caused by injury or illness that reasonable medical judgment finds would cause death imminently, so that the application of life–sustaining procedures serves only to postpone the moment of death.

**History:** 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m; 1991 a. 84; 1993 a. 27; 1995 a. 27 s. 9126 (19); 1995 a. 168, 200; 2007 a. 20 s. 9121 (6) (a).

## SUBCHAPTER II

## DECLARATION TO PHYSICIANS

**154.02 Definitions.** In this subchapter:

(1) “Declaration” means a written, witnessed document voluntarily executed by the declarant under s. 154.03 (1), but is not limited in form or substance to that provided in s. 154.03 (2).

(2) “Feeding tube” means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a qualified patient.

(3) “Qualified patient” means a declarant who has been diagnosed and certified in writing to be afflicted with a terminal condition or to be in a persistent vegetative state by 2 physicians, one of whom is the attending physician, who have personally examined the declarant.

**History:** 1995 a. 200.

**154.03 Declaration to physicians.** (1) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration, which shall take effect on the date of execution, authorizing the withholding or withdrawal of life–sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. A declarant may not authorize the withholding or withdrawal of any medication, life–sustaining procedure or feeding tube if the declarant’s attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the declarant pain or reduce the declarant’s comfort and the pain or discomfort cannot be alleviated through pain relief measures. A declarant may not authorize the withholding or withdrawal of nutrition or hydration that is administered or otherwise received by the declarant through means other than a feeding tube unless the declarant’s attending physician advises that, in his or her professional judgment, the administration is medically contraindicated. A declaration must be signed by the declarant in the presence of 2 witnesses. If the declarant is physically unable to sign a declaration, the declaration must be signed in the declarant’s name by one of the witnesses or some other person at the declarant’s express direction and in his or her presence; such a proxy signing shall either take place or be acknowledged by the declarant in the presence of 2 witnesses. The declarant is responsible for notifying his or her attending physician of the existence of the declaration. An attending physician who is so notified shall make the declaration a part of the declarant’s medical records. No witness to the execution of the declaration may, at the time of the execution, be any of the following:

(a) Related to the declarant by blood, marriage or adoption.

(b) Have knowledge that he or she is entitled to or has a claim on any portion of the declarant’s estate.

(c) Directly financially responsible for the declarant’s health care.

(d) An individual who is a health care provider, as defined in s. 155.01 (7), who is serving the declarant at the time of execution, an employee, other than a chaplain or a social worker, of the health care provider or an employee, other than a chaplain or a social

worker, of an inpatient health care facility in which the declarant is a patient.

(2) The department shall prepare and provide copies of the declaration and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department shall include, in information accompanying the declaration, at least the statutory definitions of terms used in the declaration, statutory restrictions on who may be witnesses to a valid declaration, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant’s county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health services shall be easy to read, the type size may be no smaller than 10 point, and the declaration shall be in the following form, setting forth on the first page the wording before the ATTENTION statement and setting forth on the 2nd page the ATTENTION statement and remaining wording:

DECLARATION TO PHYSICIANS (WISCONSIN LIVING WILL)

I,....., being of sound mind, voluntarily state my desire that my dying not be prolonged under the circumstances specified in this document. Under those circumstances, I direct that I be permitted to die naturally. If I am unable to give directions regarding the use of life–sustaining procedures or feeding tubes, I intend that my family and physician honor this document as the final expression of my legal right to refuse medical or surgical treatment.

1. If I have a TERMINAL CONDITION, as determined by 2 physicians who have personally examined me, I do not want my dying to be artificially prolonged and I do not want life–sustaining procedures to be used. In addition, the following are my directions regarding the use of feeding tubes:

- .... YES, I want feeding tubes used if I have a terminal condition.
.... NO, I do not want feeding tubes used if I have a terminal condition.

If you have not checked either box, feeding tubes will be used.

2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2 physicians who have personally examined me, the following are my directions regarding the use of life–sustaining procedures:

- .... YES, I want life–sustaining procedures used if I am in a persistent vegetative state.
.... NO, I do not want life–sustaining procedures used if I am in a persistent vegetative state.

If you have not checked either box, life–sustaining procedures will be used.

3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2 physicians who have personally examined me, the following are my directions regarding the use of feeding tubes:

- .... YES, I want feeding tubes used if I am in a persistent vegetative state.
.... NO, I do not want feeding tubes used if I am in a persistent vegetative state.

If you have not checked either box, feeding tubes will be used.

If you are interested in more information about the significant terms used in this document, see section 154.01 of the Wisconsin Statutes or the information accompanying this document.

ATTENTION: You and the 2 witnesses must sign the document at the same time.

Signed .... Date ....
Address .... Date of birth ....

I believe that the person signing this document is of sound mind. I am an adult and am not related to the person signing this document by blood, marriage or adoption. I am not entitled to and do not have a claim on any portion of the person’s estate and am not otherwise restricted by law from being a witness.

Witness signature .... Date signed ....
Print name ....

Witness signature .... Date signed ....
Print name ....

DIRECTIVES TO ATTENDING PHYSICIAN

1. This document authorizes the withholding or withdrawal of life–sustaining procedures or of feeding tubes when 2 physicians, one of whom is the attending physician, have personally examined and certified in writing that the patient has a terminal condition or is in a persistent vegetative state.

2. The choices in this document were made by a competent adult. Under the law, the patient’s stated desires must be followed unless you believe that withholding or withdrawing life–sustaining procedures or feeding tubes would cause the patient pain or reduced comfort and that the pain or discomfort cannot be alleviated through pain relief measures. If the patient’s stated desires are that life–sustaining procedures or feeding tubes be used, this directive must be followed.

3. If you feel that you cannot comply with this document, you must make a good faith attempt to transfer the patient to another physician who will comply. Refusal or failure to make a good faith attempt to do so constitutes unprofessional conduct.

4. If you know that the patient is pregnant, this document has no effect during her pregnancy.

\* \* \* \* \*

The person making this living will may use the following space to record the names of those individuals and health care providers to whom he or she has given copies of this document:

.....
.....
.....

History: 1983 a. 202; 1985 a. 199; 1991 a. 84, 281; 1995 a. 27 s. 9126 (19); 1995 a. 168; 2007 a. 20 s. 9121 (6) (a).

Wisconsin statutes provide 3 instruments through which an individual may state healthcare wishes in the event of incapacitation: a “declaration to physicians,” a “do–not–resuscitate order,” and a “health care power of attorney.” These statutory instruments apply under specific circumstances, have their own signature requirements, and may be limited in the extent of authorization they afford. A form will trigger no statutory immunities for healthcare providers when it lacks the features of these statutory documents. A court might conclude, however, that such a form is relevant in discerning a person’s intent. OAG 10–14

Living will statutes: The first decade. Gelfand. 1987 WLR 737.
Planning Ahead for Incapacity. Shapiro. Wis. Law. Aug. 1991.
Wisconsin’s New Living Will Act. Gilbert. Wis. Law. March 1992.

154.05 Revocation of declaration. (1) METHOD OF REVOCATION. A declaration may be revoked at any time by the declarant by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn or otherwise destroyed by the declarant or by some person who is directed by the declarant and who acts in the presence of the declarant.

(b) By a written revocation of the declarant expressing the intent to revoke, signed and dated by the declarant.

(c) By a verbal expression by the declarant of his or her intent to revoke the declaration. This revocation becomes effective only if the declarant or a person who is acting on behalf of the declarant notifies the attending physician of the revocation.

(d) By executing a subsequent declaration.

(2) RECORDING THE REVOCATION. The attending physician shall record in the patient’s medical record the time, date and place

of the revocation and the time, date and place, if different, that he or she was notified of the revocation.

**History:** 1983 a. 202; 1995 a. 168.

**154.07 Duties and immunities. (1) LIABILITY.** (a) No physician, inpatient health care facility or health care professional acting under the direction of a physician may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:

1. Participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this subchapter.

2. Failing to act upon a revocation unless the person or facility has actual knowledge of the revocation.

3. Failing to comply with a declaration, except that failure by a physician to comply with a declaration of a qualified patient constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the qualified patient to another physician who will comply with the declaration.

(b) 1. No person who acts in good faith as a witness to a declaration under this subchapter may be held civilly or criminally liable for participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this subchapter.

2. Subdivision 1. does not apply to a person who acts as a witness in violation of s. 154.03 (1).

(c) Pars. (a) and (b) apply to acts or omissions in connection with a provision of a document that is executed in another jurisdiction if the provision is valid and enforceable under s. 154.11 (9).

**(2) EFFECT OF DECLARATION.** The desires of a qualified patient who is competent supersede the effect of the declaration at all times. If a qualified patient is adjudicated incompetent at the time of the decision to withhold or withdraw life-sustaining procedures or feeding tubes, a declaration executed under this subchapter is presumed to be valid. The declaration of a qualified patient who is diagnosed as pregnant by the attending physician has no effect during the course of the qualified patient's pregnancy. For the purposes of this subchapter, a physician or inpatient health care facility may presume in the absence of actual notice to the contrary that a person who executed a declaration was of sound mind at the time.

**History:** 1983 a. 202; 1991 a. 84; 1995 a. 200; 2003 a. 290; 2005 a. 387.

**154.11 General provisions. (1) SUICIDE.** The withholding or withdrawal of life-sustaining procedures or feeding tubes from a qualified patient under this subchapter does not, for any purpose, constitute suicide. Execution of a declaration under this subchapter does not, for any purpose, constitute attempted suicide.

**(2) LIFE INSURANCE.** Making a declaration under s. 154.03 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of life-sustaining procedures or feeding tubes from an insured qualified patient.

**(3) HEALTH INSURANCE.** No person may be required to execute a declaration as a condition prior to being insured for, or receiving, health care services.

**(4) OTHER RIGHTS.** This subchapter does not impair or supersede any of the following:

(a) A person's right to withhold or withdraw life-sustaining procedures or feeding tubes.

(b) The right of any person who does not have a declaration in effect to receive life-sustaining procedures or feeding tubes.

**(5) INTENT.** Failure to execute a declaration under this subchapter creates no presumption that the person consents to the use or withholding of life-sustaining procedures or feeding tubes in the event that the person suffers from a terminal condition or is in a persistent vegetative state.

**(5m) VALID DECLARATION.** A declaration that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

**(6) CONSTRUCTION.** Nothing in this subchapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.

**(7) APPLICABILITY.** (a) A declaration under s. 154.03 (2), 1983 stats., that is executed before April 22, 1986, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1983 stats.

(b) A declaration under s. 154.03 (2), 1983 stats., that is executed after April 22, 1986, is void.

(c) A declaration under s. 154.03 (2), 1989 stats., that is executed before, on or after December 11, 1991, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1989 stats.

(d) Nothing in this chapter, except par. (b), may be construed to render invalid a declaration that was validly executed under this chapter before April 6, 1996.

**(8) INCLUSION IN MEDICAL RECORD.** Upon receipt of a declaration, a health care facility, as defined in s. 155.01 (6), or a health care provider, as defined in s. 155.01 (7), shall, if the declarant is a patient of the health care facility or health care provider, include the declaration in the medical record of the declarant.

**(9) DECLARATION FROM OTHER JURISDICTION.** A valid document that authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes and that is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state to the extent that the document is consistent with the laws of this state.

**History:** 1983 a. 202; 1985 a. 199; 1991 a. 84; 1995 a. 168, 200.

**154.13 Filing declaration. (1)** A declarant or an individual authorized by the declarant may, for a fee, file the declarant's declaration, for safekeeping, with the register in probate of the county in which the declarant resides.

**(2)** If a declarant or authorized individual has filed the declarant's declaration as specified in sub. (1), the following persons may have access to the declaration without first obtaining consent from the declarant:

(a) The individual authorized by the declarant.

(b) A health care provider who is providing care to the declarant.

(c) The court and all parties involved in proceedings in this state for adjudication of incompetency and appointment of a guardian for the declarant, for emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.

(d) Any person under the order of a court for good cause shown.

**(3)** Failure to file a declaration under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

**History:** 1991 a. 281; 2005 a. 387.

**154.15 Penalties. (1)** Any person who intentionally conceals, cancels, defaces, obliterates or damages the declaration of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.

**(2)** Any person who, with the intent to cause a withholding or withdrawal of life-sustaining procedures or feeding tubes contrary to the wishes of the declarant, illegally falsifies or forges the declaration of another or conceals a declaration revoked under s. 154.05 (1) (a) or (b) or any person who intentionally withholds actual knowledge of a revocation under s. 154.05 is guilty of a Class F felony.

**History:** 1983 a. 202; 1985 a. 199; 1991 a. 84; 1995 a. 168; 1997 a. 283; 2001 a. 109.

## SUBCHAPTER III

## DO–NOT–RESUSCITATE ORDERS

**154.17 Definitions.** In this subchapter:

(1) “Do–not–resuscitate bracelet” means a standardized identification bracelet that meets the specifications established under s. 154.27 (1), or that is approved by the department under s. 154.27 (2), that bears the inscription “Do Not Resuscitate” and signifies that the wearer is a qualified patient who has obtained a do–not–resuscitate order and that the order has not been revoked.

(2) “Do–not–resuscitate order” means a written order issued under the requirements of this subchapter that directs emergency medical services practitioners, emergency medical responders, and emergency health care facilities personnel not to attempt cardiopulmonary resuscitation on a person for whom the order is issued if that person suffers cardiac or respiratory arrest.

(2r) “Emergency medical responder” has the meaning given under s. 256.01 (4p).

(3) “Emergency medical services practitioner” has the meaning given under s. 256.01 (5).

(4) “Qualified patient” means a person who has attained the age of 18 and to whom any of the following conditions applies:

(a) The person has a terminal condition.

(b) The person has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful in restoring cardiac or respiratory function or the person would experience repeated cardiac or pulmonary failure within a short period before death occurs.

(c) The person has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation of that person would cause significant physical pain or harm that would outweigh the possibility that resuscitation would successfully restore cardiac or respiratory function for an indefinite period of time.

(5) “Resuscitation” means cardiopulmonary resuscitation or any component of cardiopulmonary resuscitation, including cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, administration of cardiac resuscitation medications and related procedures. “Resuscitation” does not include the Heimlich maneuver or similar procedure used to expel an obstruction from the throat.

**History:** 1995 a. 200; 1997 a. 27; 1999 a. 9; 2007 a. 130; 2017 a. 12.

**154.19 Do–not–resuscitate order.** (1) No person except an attending physician may issue a do–not–resuscitate order. An attending physician may issue a do–not–resuscitate order to a patient only if all of the following apply:

(a) The patient is a qualified patient.

(b) Except as provided in s. 154.225 (2), the patient requests the order.

(bm) Except as provided in s. 154.225 (2), the patient consents to the order after being provided the information specified in sub. (2) (a).

(c) The order is in writing.

(d) Except as provided in s. 154.225 (2), the patient signs the order.

(e) The physician does not know the patient to be pregnant.

(2) (a) The attending physician, or a person directed by the attending physician, shall provide the patient with written information about the resuscitation procedures that the patient has chosen to forego and the methods by which the patient may revoke the do–not–resuscitate order.

(b) After providing the information under par. (a), the attending physician, or the person directed by the attending physician, shall document in the patient’s medical record the medical condition that qualifies the patient for the do–not–resuscitate order,

shall make the order in writing and shall do one of the following, as requested by the qualified patient:

1. Affix to the wrist of the patient a do–not–resuscitate bracelet that meets the specifications established under s. 154.27 (1).

2. Provide an order form from a commercial vendor approved by the department under s. 154.27 (2) to permit the patient to order a do–not–resuscitate bracelet from the commercial vendor.

(3) (a) Except as provided in par. (b), emergency medical services practitioners, as defined in s. 256.01 (5), emergency medical responders, as defined in s. 256.01 (4p), and emergency health care facilities personnel shall follow do–not–resuscitate orders. The procedures used in following a do–not–resuscitate order shall be in accordance with any procedures established by the department by rule.

(b) Paragraph (a) does not apply under any of the following conditions:

1. The order is revoked under s. 154.21 or 154.225 (2).

2. The do–not–resuscitate bracelet appears to have been tampered with or removed.

3. The emergency medical services practitioner, emergency medical responder or member of the emergency health care facility knows that the patient is pregnant.

**History:** 1995 a. 200; 1997 a. 27; 1999 a. 9; 2017 a. 12.

**Cross–reference:** See also ch. DHS 125, Wis. adm. code.

Wisconsin statutes provide 3 instruments through which an individual may state healthcare wishes in the event of incapacitation: a “declaration to physicians,” a “do–not–resuscitate order,” and a “health care power of attorney.” These statutory instruments apply under specific circumstances, have their own signature requirements, and may be limited in the extent of authorization they afford. A form will trigger no statutory immunities for healthcare providers when it lacks the features of these statutory documents. A court might conclude, however, that such a form is relevant in discerning a person’s intent. **OAG 10–14**

County jail staff are not required to follow do–not–resuscitate orders unless the staff falls into one of the three occupational categories named in sub. (3) (a), specifically, emergency medical services practitioners, emergency medical responders, and emergency health care facilities personnel. **OAG 2–19**.

Wisconsin’s Do Not Resuscitate Bracelet Law Raises Legal and Medical Issues. Mandel. Wis. Law. Dec. 1997.

**154.21 Revocation of do–not–resuscitate order.**

(1) **METHOD OF REVOCATION.** A patient may revoke a do–not–resuscitate order at any time by any of the following methods:

(a) The patient expresses to an emergency medical services practitioner, to an emergency medical responder, or to a person who serves as a member of an emergency health care facility’s personnel the desire to be resuscitated. The emergency medical services practitioner, emergency medical responder, or the member of the emergency health care facility shall promptly remove the do–not–resuscitate bracelet.

(b) The patient defaces, burns, cuts or otherwise destroys the do–not–resuscitate bracelet.

(c) The patient removes the do–not–resuscitate bracelet or another person, at the patient’s request, removes the do–not–resuscitate bracelet.

(2) **RECORDING THE REVOCATION.** The attending physician shall be notified as soon as practicable of the patient’s revocation and shall record in the patient’s medical record the time, date and place of the revocation, if known, and the time, date and place, if different, that he or she was notified of the revocation. A revocation under sub. (1) is effective regardless of when the attending physician has been notified of that revocation.

**History:** 1995 a. 200; 2017 a. 12.

**154.225 Guardians and health care agents.** (1) In this section:

(a) “Guardian” has the meaning given in s. 51.40 (1) (f).

(b) “Health care agent” has the meaning given in s. 155.01 (4).

(c) “Incapacitated” has the meaning given in s. 50.06 (1).

(2) The guardian or health care agent of an incapacitated qualified patient may request a do–not–resuscitate order on behalf of that incapacitated qualified patient and consent to the order and sign it after receiving the information specified in s. 154.19 (2) (a). The guardian or health care agent of an incapacitated qualified

patient may revoke a do–not–resuscitate order on behalf of the incapacitated qualified patient by any of the following methods:

(a) The guardian or health care agent directs an emergency medical services practitioner, an emergency medical responder, or a person who serves as a member of an emergency health care facility’s personnel to resuscitate the patient. The emergency medical services practitioner, the emergency medical responder, or the member of the emergency health care facility shall promptly remove the do–not–resuscitate bracelet.

(b) The guardian or health care agent defaces, burns, cuts or otherwise destroys the do–not–resuscitate bracelet.

(c) The guardian or health care agent removes the do–not–resuscitate bracelet.

**History:** 1997 a. 27; 2017 a. 12.

**154.23 Liability.** No physician, emergency medical services practitioner, emergency medical responder, health care professional, or emergency health care facility may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:

(1) Under the directive of a do–not–resuscitate order, withholding or withdrawing, or causing to be withheld or withdrawn, resuscitation from a patient.

(2) Failing to act upon the revocation of a do–not–resuscitate order unless the person or facility had actual knowledge of the revocation.

(3) Failing to comply with a do–not–resuscitate order if the person or facility did not have actual knowledge of the do–not–resuscitate order or if the person or facility in good faith believed that the order had been revoked.

**History:** 1995 a. 200; 2017 a. 12.

**154.25 General provisions.** (1) **SUICIDE.** Under this subchapter, the withholding or withdrawing of resuscitation from a patient wearing a valid do–not–resuscitate bracelet does not, for any purpose, constitute suicide. Requesting a do–not–resuscitate order under this subchapter does not, for any purpose, constitute attempted suicide.

(2) **LIFE INSURANCE.** Requesting a do–not–resuscitate order under s. 154.19 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of resuscitation from a qualified patient.

(3) **HEALTH INSURANCE.** No person may be required to request a do–not–resuscitate order as a condition prior to being admitted to a health care facility or being insured for, or receiving, health care services.

(4) **OTHER RIGHTS.** This subchapter does not impair or supersede any of the following:

(a) A person’s right to withhold or withdraw resuscitation.

(b) The right of any person who does not have a do–not–resuscitate order in effect to receive resuscitation.

(5) **INTENT.** Failure to request a do–not–resuscitate order creates no presumption that the person consents to the use or withholding of resuscitation in the event that the person suffers from a condition that renders the person a qualified patient.

(6) **VALID DO–NOT–RESUSCITATE BRACELET.** A do–not–resuscitate bracelet that has not been removed, altered, or tampered with in any way shall be presumed valid, unless the patient, the patient’s guardian, or the patient’s health care agent expresses to the emergency medical services practitioner, emergency medical responder, or emergency health care facility personnel the patient’s desire to be resuscitated.

(6m) **DESIRE OF THE PATIENT.** The desire of a patient to be resuscitated supersedes the effect of that patient’s do–not–resuscitate order at all times.

(7) **CONSTRUCTION.** Nothing in this subchapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.

**History:** 1995 a. 200; 1997 a. 27; 2017 a. 12.

**154.27 Specifications and distribution of do–not–resuscitate bracelet.** (1) The department shall establish by rule a uniform standard for the size, color, and design of all do–not–resuscitate bracelets. Except as provided in sub. (2), the rules shall require that the do–not–resuscitate bracelets include the inscription “Do Not Resuscitate”; the name, address, date of birth and gender of the patient; and the name, business telephone number and signature of the attending physician issuing the order.

(2) The department may approve a do–not–resuscitate bracelet developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words “Wisconsin Do–Not–Resuscitate–EMS” and the qualified patient’s first and last name on the back. The department may not approve a do–not–resuscitate bracelet developed and distributed by a commercial vendor if the vendor does not require a doctor’s order for the bracelet prior to distributing it to a patient.

**History:** 1995 a. 200; 1999 a. 9.

**Cross-reference:** See also ch. DHS 125, Wis. adm. code.

**154.29 Penalties.** (1) Any person who willfully conceals, defaces or damages the do–not–resuscitate bracelet of another person without that person’s consent may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(2) Any person who, with the intent to cause the withholding or withdrawal of resuscitation contrary to the wishes of any patient, falsifies, forges or transfers a do–not–resuscitate bracelet to that patient or conceals the revocation under s. 154.21 of a do–not–resuscitate order or any responsible person who withholds personal knowledge of a revocation under s. 154.21 is guilty of a Class F felony.

(3) Any person who directly or indirectly coerces, threatens or intimidates an individual so as to cause the individual to sign or issue a do–not–resuscitate order shall be fined not more than \$500 or imprisoned for not more than 30 days or both.

**History:** 1995 a. 200; 1997 a. 283; 2001 a. 109.

## SUBCHAPTER IV

### AUTHORIZATION FOR FINAL DISPOSITION

**154.30 Control of final disposition of certain human remains.** (1) **DEFINITIONS.** (a) “Authorization for final disposition” means a document that satisfies the conditions under sub. (8) (d) or (dm), and that is voluntarily executed by a declarant under sub. (8), but is not limited in form or substance to that provided in sub. (8).

(b) “Cemetery authority” has the meaning given in s. 157.061 (2).

(c) “Credential” has the meaning given in s. 440.01 (2) (a).

(d) “Crematory authority” has the meaning given in s. 440.70 (9).

(e) “Declarant” means an individual who executes an authorization for final disposition.

(f) “Estranged” means being physically and emotionally alienated for a period of time, at the time of the decedent’s death, and clearly demonstrating an absence of due affection, trust, and regard.

(g) “Final disposition” means disposition of a decedent’s remains, including any of the following:

1. Arrangements for a viewing.

2. A funeral ceremony, memorial service, graveside service, or other last rite.

3. A burial, cremation and burial, or other disposition, or donation of the decedent's body.

(h) "Funeral director" has the meaning given in s. 445.01 (5).

(i) "Health care provider" means any individual who has a credential to provide health care.

(L) "Representative" means an individual specifically designated in an authorization for final disposition or, if that individual is unable or unwilling to carry out the declarant's decisions and preferences, a successor representative designated in the authorization for final disposition to do so.

(m) "Social worker" has the meaning given in s. 252.15 (1) (er).

**(2) INDIVIDUALS WITH CONTROL OF FINAL DISPOSITION; ORDER.**

(a) Notwithstanding s. 445.14 and except as provided in par. (b) and sub. (3), any of the following, as prioritized in the following order, who is at least 18 years old and has not been adjudicated incompetent under ch. 54 or ch. 880, 2003 stats., may control final disposition, including the location, manner, and conditions of final disposition:

1. Subject to sub. (8) (e), a representative of the decedent acting under the decedent's authorization for final disposition that conveys to the representative the control of final disposition, or a successor representative.

2. The surviving spouse of the decedent.

3. The surviving child of the decedent, unless more than one child of the decedent survives. In such an instance, the majority of the surviving children has control of the final disposition, except that fewer than the majority of the surviving children may control the final disposition if that minority has used reasonable efforts to notify all other surviving children and is not aware of opposition by the majority to the minority's intended final disposition.

4. The surviving parent or parents of the decedent or a surviving parent who is available if the other surviving parent is unavailable after the available surviving parent has made reasonable efforts to locate him or her.

5. The surviving sibling of the decedent, unless more than one sibling of the decedent survives. In such an instance, the majority of the surviving siblings has control of the final disposition, except that fewer than the majority of the surviving siblings may control the final disposition if that minority has used reasonable efforts to notify all other surviving siblings and is not aware of opposition by the majority to the minority's intended final disposition.

6. In descending order, an individual in the class of the next degree of kinship specified in s. 990.001 (16).

7. The guardian of the person, if any, of the decedent.

8. Any individual other than an individual specified under subs. 1. to 7. who is willing to control the final disposition and who attests in writing that he or she has made a good-faith effort, to no avail, to contact the individuals under subs. 1. to 7.

(b) Control of final disposition under par. (a), in the order of priority specified in par. (a), is restored to an individual specified in sub. (3) (b) 1. for whom charges under sub. (3) (b) 1. a. to d. are dismissed or who is found not guilty of the offense. Subject to s. 69.18 (4), the control of final disposition under this paragraph, with respect to a decedent for whom disposition has already been made of his or her remains, is limited, as appropriate, to any of the following:

1. A funeral ceremony, memorial service, graveside service, or other last rite.

2. Disinterment.

3. Reinterment, cremation and reinterment, or other disposition of the decedent's body.

**(3) EXCEPTIONS.** (a) All of the following are exceptions to any control conferred under sub. (2):

1. The disposition of any unrevoked anatomical gift made by the decedent under s. 157.06 or made by an individual other than the decedent under s. 157.06.

2. Any power or duty of a coroner, medical examiner, or other physician licensed to perform autopsies with respect to the reporting of certain deaths, performance of autopsies, and inquests under ch. 979.

(b) None of the following is authorized under sub. (2) to control the final disposition:

1. Unless sub. (2) (b) applies, an individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) but who has been charged with any of the following in connection with the decedent's death and the charges are known to the funeral director, crematory authority, or cemetery authority:

a. First-degree intentional homicide under s. 940.01 (1).

b. First-degree reckless homicide under s. 940.02.

c. Second-degree intentional homicide under s. 940.05.

d. Second-degree reckless homicide under s. 940.06.

2. An individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) but who fails to exercise this authorization within 2 days after he or she is notified of the decedent's death or who cannot be located after reasonable efforts to do so has been made.

3. The decedent's spouse, if an action under ch. 767 to terminate the marriage of the spouse and the decedent was pending at the time of the decedent's death.

4. An individual for whom a determination is made by the probate court under par. (c) 2. b. that the individual and the decedent were estranged at the time of death.

(c) If the individuals on the same level of priority specified in sub. (2) (a) are unable to agree on the final disposition, the probate court that has jurisdiction for the county in which the decedent resided at the time of his or her death may designate an individual as most fit and appropriate to control the final disposition. All of the following apply to a designation made under this paragraph:

1. After the decedent's death, a petition regarding control of the final disposition shall be filed with the probate court by any of the following:

a. A relative of the decedent.

b. An individual seeking control of the final disposition who claims a closer personal relationship to the decedent than the decedent's next of kin and who was not in the employ of the decedent or the decedent's family.

c. If 2 or more individuals on the same level of priority in sub. (2) (a) cannot, by majority vote, decide concerning the final disposition, any of those individuals or the funeral director, crematory authority, or cemetery authority that possesses the decedent's remains.

2. The probate court may consider all of the following:

a. The reasonableness and practicality of the proposed final disposition.

b. The degree of the personal relationship between the decedent and each of the individuals claiming the right of final disposition, including whether the decedent was estranged from any of the individuals.

c. Except as provided in subd. 3., the desires of the individual or individuals who are ready, able, and willing to pay the cost of the final disposition.

d. The express written desires of the decedent.

e. The degree to which any proposed final disposition would permit maximum participation by family members, friends, and others who wish to pay final respects to the decedent.

3. An individual's payment or agreement to pay for all or part of the costs of final disposition, or the fact that an individual is the personal representative of the decedent, does not, by itself, provide the individual any greater opportunity to control the final disposition than the individual otherwise has under this section.

**(4) DECLINING TO EXERCISE CONTROL OR RESIGNING CONTROL.** An individual who is otherwise authorized to control final disposition

tion under the order of priority of individuals specified in sub. (2) (a) or who is designated under sub. (3) (c) may accept the control, may decline to exercise the control, or may, after accepting the control, resign it.

(5) **LIABILITY OF FUNERAL DIRECTOR, CREMATORY AUTHORITY, OR CEMETERY AUTHORITY.** (a) If inability to agree exists among any individuals, as specified in sub. (3) (c) (intro.), no funeral director, crematory authority, or cemetery authority is civilly or criminally liable for his or her refusal to accept the decedent's remains, to inter or otherwise dispose of the decedent's remains, or to complete the arrangements for the final disposition unless specifically directed to do so under an order of the probate court or unless the individuals in disagreement present the funeral director, crematory authority, or cemetery authority with a written agreement, signed by the individuals, that specifies the final disposition.

(b) A funeral director, crematory authority, or cemetery authority that retains the remains of a decedent for final disposition before individuals specified in sub. (3) (c) (intro.) reach agreement or before the probate court makes a final decision under sub. (3) (c) may embalm the remains, unless the authorization for final disposition forbids embalming, or may refrigerate and shelter the remains while awaiting the agreement or the probate court's decision and may add the cost of embalming or refrigeration and shelter, as appropriate, to the final disposition costs.

(c) If a funeral director, crematory authority, or cemetery authority files a petition under sub. (3) (c) 1., the funeral director, crematory authority, or cemetery authority may add to the cost of final disposition reasonable legal fees and costs associated with the court's review of the petition.

(d) This subsection may not be construed to require or otherwise impose a duty upon a funeral director, crematory authority, or cemetery authority to file a petition under sub. (3) (c) 1., and a funeral director, crematory authority, or cemetery authority may not be held criminally or civilly liable for failing or omitting to file the petition.

(e) In the absence of written notice to the contrary from an individual who claims control of the final disposition because of precedence under the order of priority of individuals specified under sub. (2) (a), no funeral director, crematory authority, or cemetery authority, who relies in good faith on instructions concerning the final disposition from another individual who first claims control of the final disposition but has less precedence under the order of priority of individuals specified in sub. (2) (a), and who acts or omits to act in accordance with these instructions, is civilly or criminally liable or may be found guilty of unprofessional conduct for the action or omission.

(6) **LIABILITY FOR COSTS OF FINAL DISPOSITION.** Notwithstanding s. 445.14, liability for the reasonable costs of the final disposition is from the declarant decedent's estate, as specified under s. 859.25 (1).

(7) **JURISDICTION.** The probate court for the county in which the decedent last resided has exclusive jurisdiction over matters that arise under this section.

(8) **AUTHORIZATION FOR FINAL DISPOSITION.** (a) An individual who is of sound mind and has attained age 18 may voluntarily execute an authorization for final disposition, which shall take effect on the date of execution. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect under ch. 54 or ch. 880, 2003 stats., is presumed not to be of sound mind for purposes of this subsection.

(b) An authorization for final disposition may express the declarant's special directions, instructions concerning religious observances, and suggestions concerning any of the following:

1. Arrangements for a viewing.
2. Funeral ceremony, memorial service, graveside service, or other last rite.
3. Burial, cremation and burial, or other disposition, or donation of the declarant's body after death.

(c) An authorization for final disposition requires a representative and one or more named successor representatives to carry out the directions, instructions, and suggestions of the declarant, as expressed in the declarant's authorization for final disposition, unless the directions, instructions, and suggestions exceed available resources from the decedent's estate or are unlawful or unless there is no realistic possibility of compliance.

(d) Except as provided in par. (dm), an authorization for final disposition shall meet all of the following requirements:

1. List the name and last-known address, as of the date of execution of the authorization for final disposition, of each representative and each successor representative named, and be signed by each representative and each successor representative named.

2. Be signed and dated by the declarant, with the signature witnessed by 2 witnesses who each have attained age 18 and who are not related by blood, marriage, or adoption to the declarant, or acknowledged before a notary public. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant's name by an individual at the declarant's express direction and in his or her presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.

(dm) A document executed by a member of the U.S. armed forces in the manner and on a form provided by the federal department of defense that designates a person to direct the disposition of the member's remains is a valid authorization for final disposition under this section.

(e) If any of the following has a direct professional relationship with or provides professional services directly to the declarant and is not related to the declarant by blood, marriage, or adoption, that person may not serve as a representative under the requirements of this subsection:

1. A funeral director.
2. A crematory authority.
3. A cemetery authority.
4. An employee of a funeral director, crematory authority, or cemetery authority.
6. A health care provider.
8. A social worker.

(f) The department shall prepare and provide copies of the authorization for final disposition form and accompanying information for distribution in quantities to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing homes, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the authorization for final disposition form, at least the statutory definitions of terms used in the form, and an instruction to potential declarants to read and understand the information before completing the form. The department may charge a reasonable fee for the cost of preparation and distribution. The authorization for final disposition form distributed by the department shall be easy to read, in not less than 10-point type, and in the following form:

**AUTHORIZATION FOR FINAL DISPOSITION**

I, .... (print name and address), being of sound mind, willfully and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative under the requirements of section 154.30, Wisconsin statutes, and, with respect to that final disposition only, I hereby appoint the representative and any successor representative named in this document. All decisions made by my representative or any successor representative with respect to the final disposition of my remains are binding.

Name of representative .....  
 Address .....  
 Telephone number .....

If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within the time necessary to control the final disposition of my remains, I hereby appoint the following individuals, each to act alone and successively, in the order specified, to serve as my successor representative:

- 1. Name of first successor representative .....  
 Address .....  
 Telephone number .....
- 2. Name of second successor representative .....  
 Address .....  
 Telephone number .....

SUGGESTED SPECIAL DIRECTIONS .....  
 SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS  
 OBSERVANCES .....  
 SUGGESTED SOURCE OF FUNDS FOR  
 IMPLEMENTING FINAL DISPOSITION  
 DIRECTIONS AND INSTRUCTIONS .....

This authorization becomes effective upon my death.

I hereby revoke any prior authorization for final disposition that I may have signed before the date that this document is signed.

I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

The representative and any successor representative, by accepting appointment under this document, assume the powers and duties specified for a representative under section 154.30, Wisconsin statutes.

Signed this ..... day of .....  
 Signature of declarant .....

I hereby accept appointment as representative for the control of final disposition of the declarant's remains.

Signed this ..... day of .....  
 Signature of representative .....

I hereby accept appointment as successor representative for the control of final disposition of the declarant's remains.

Signed this ..... day of .....  
 Signature of first successor representative .....

Signed this ..... day of .....  
 Signature of second successor  
 representative .....

I attest that the declarant signed or acknowledged this authorization for final disposition in my presence and that the declarant appears to be of sound mind and not subject to duress, fraud, or

undue influence. I further attest that I am not the representative or the successor representative appointed under this document, that I am aged at least 18, and that I am not related to the declarant by blood, marriage, or adoption.

Witness (print name) .....  
 Signature .....  
 Address .....  
 Date .....

Witness (print name) .....  
 Signature .....  
 Address .....  
 Date .....

State of Wisconsin  
 County of .....

On (date) ....., before me personally appeared (name of declarant) ....., known to me or satisfactorily proven to be the individual whose name is specified in this document as the declarant and who has acknowledged that he or she executed the document for the purposes expressed in it. I attest that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence.

Notary public .....  
 My commission expires .....

(9) REVOCATION OF AUTHORIZATION FOR FINAL DISPOSITION. A declarant may revoke an authorization for final disposition at any time by any of the following methods:

(a) Cancelling, defacing, obliterating, burning, tearing, or otherwise destroying the authorization for final disposition or directing some other person to cancel, deface, obliterate, burn, tear, or otherwise destroy the authorization for final disposition in the presence of the declarant. In this paragraph, "cancelling" includes a declarant's writing on a declaration of final disposition, "I hereby revoke this declaration of final disposition," and signing and dating that statement.

(b) Revoking in writing the authorization for final disposition. The declarant shall sign and date any written revocation under this subsection.

(c) Executing a subsequent authorization for final disposition.

(10) PENALTY. Any person who intentionally conceals, cancels, defaces, obliterates, or damages the authorization for final disposition of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.

History: 2007 a. 58; 2009 a. 180, 197.

A family's interest in the remains of its deceased loved ones is simply too contingent to constitute a protected property interest. Sub. (3) (a) 2. provides that the next-of-kin's right to control final disposition of a loved one's remains is subject to the medical examiner's powers and duties under ch. 979. A medical examiner's discretion to order autopsies and to retain specimens is extremely broad. Accordingly, a family's right to dispose of the remains of its deceased loved ones is not "securely and durably" theirs, and thus it does not rise to the level of a constitutionally protected property interest. *Olejnik v. England*, 147 F. Supp. 3d 763 (2015).