

1985 Assembly Bill 252

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## 1985 Wisconsin Act 199

AN ACT to amend 154.01 (8), 154.03 and 154.15 (2); and to create 154.03 (1m) and 154.11 (7) of the statutes, relating to natural death and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 154.01 (8) of the statutes is amended to read:

154.01 (8) "Terminal condition" means an incurable condition caused by injury or illness that reasonable medical judgment finds would cause death ~~within 30 days, regardless of the application of life-sustaining procedures~~ imminently, so that the application of life-sustaining procedures serves only to postpone the moment of death.

SECTION 2. 154.03 of the statutes is amended to read:

**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 authorizing the withholding or withdrawal of life-sustaining procedures when the person is in a terminal condition, which shall take effect on the date of execution ~~and expire 5 years after the date of execution~~. 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. Witnesses may not be related to the declarant by blood or marriage or entitled to any portion of the estate of the declarant upon his or her decease under any will of the declarant. The attending physician, the attending nurse or the attending medical staff, an employe of the attending physi-

cian or an employe of the inpatient health care facility in which the declarant is a patient who is a health care provider under s. 146.81 (1) and is involved in the medical care of that patient or any person with a claim against any portion of the estate of the declarant upon his or her death at the time of the execution of the declaration may not be a witness to a declaration. 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 original declaration a part of the declarant's medical records.

(2) The department of health and social services shall prepare and provide copies of the declaration for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department of health and social services may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health and social services shall be in the following form:

### DECLARATION TO PHYSICIANS

Declaration made this .... day of .... (month), .... (year).

1. I, ..., being of sound mind, wilfully and voluntarily state my desire that my dying may not be artificially prolonged if I have an incurable injury or illness certified to be a terminal condition by 2 physicians who have personally examined me, one of whom is my attending physician, and if the physicians have determined that my death ~~will occur within 30 days whether or not life-sustaining procedures are utilized~~

~~because is imminent, so that~~ the application of life-sustaining procedures would serve only to prolong artificially the dying process. Under these circumstances, I direct that life-sustaining procedures be withheld or withdrawn and that I be permitted to die naturally, with only ~~the~~:

a. The continuation of nutritional support and the fluid maintenance; and

b. The alleviation of pain by administering medication or other medical procedure.

2. If I am unable to give directions regarding the use of life-sustaining procedures, I intend that my family and physician honor this declaration as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences from this refusal.

3. If I have been diagnosed as pregnant and my physician knows of this diagnosis, this declaration has no effect during the course of my pregnancy.

4. This declaration takes effect immediately ~~and expires 5 years from this date.~~

~~If I want this declaration to continue after its expiration I will reexecute it.~~

I understand this declaration and I am emotionally and mentally competent to make this declaration.

Signed .... Address ....

I know the declarant personally and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, and am not entitled to any portion of the declarant's estate under any will of the declarant. I am neither the declarant's attending physician, the attending nurse, the attending medical staff nor an employe of the attending physician or of the inpatient health care facility in which the declarant may be a patient and I have no claim against the declarant's estate at this time, except that, if I am not a health care provider who is involved in the medical care of the declarant, I may be an employe of the inpatient health care facility regardless of whether or not the facility may have a claim against the estate of the declarant.

Witness .... Witness ....

This declaration is executed as provided in chapter 154, Wisconsin Statutes.

SECTION 2m. 154.03 (1m) of the statutes is created to read:

154.03 (1m) Notwithstanding sub. (1), an employe of the inpatient health care facility in which the declarant is a patient but who is not involved in the medical care or treatment of that patient may be a witness to the declaration, regardless of whether or not the inpatient health care facility may have a claim against the estate of the declarant.

SECTION 4. 154.11 (7) of the statutes is created to read:

154.11 (7) **APPLICABILITY.** (a) A declaration under s. 154.03 (2), 1983 stats., that is executed before the effective date of this subsection .... [revisor inserts date], 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 the effective date of this subsection .... [revisor inserts date], is void.

SECTION 5. 154.15 (2) of the statutes is amended to read:

154.15 (2) Any person who, with the intent to cause a withholding or withdrawal of life-sustaining procedures 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 responsible person who withholds personal knowledge of a revocation under s. 154.05 ~~and thus directly causes life-sustaining procedures to be withheld or withdrawn is guilty of homicide by reckless conduct under s. 940.06 if death occurs or attempted homicide by reckless conduct if death does not occur shall be fined not more than \$10,000 or imprisoned not more than 10 years or both.~~

SECTION 6. **Initial applicability.** The treatment of sections 154.01 (8) and 154.03 of the statutes by this act applies to declarations executed on or after the effective date of this SECTION.