

CHAPTER 154

DECLARATIONS TO PHYSICIANS AND DO–NOT–RESUSCITATE ORDERS

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NOTE: Chapter 154 (title) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

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 and family 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.

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 and family 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.

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).

(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 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.

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 for guardianship of the declarant under ch. 880, 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.

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 shall be fined not more than \$10,000 or imprisoned not more than 10 years or both.

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

SUBCHAPTER III

DO-NOT-RESUSCITATE ORDERS

154.17 Definitions. In this subchapter:

(1) "Do-not-resuscitate bracelet" means a standardized identification bracelet of uniform size, color, and design, approved by the department, 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 wearer has not revoked the request for the order.

(2) "Do-not-resuscitate order" means a written order issued under the requirements of this subchapter that directs emergency medical technicians, first 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.

(3) "Emergency medical technician" has the meaning given under s. 146.50 (1) (e).

(3m) "First responder" has the meaning given under s. 146.53 (1) (d).

(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.

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) The patient requests the order.
- (c) The order is in writing.
- (d) The patient signs the order.
- (e) The physician does not know the patient to be pregnant.

(2) (a) Upon issuing the do–not–resuscitate order, 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 affix to the wrist of the patient a do–not–resuscitate bracelet and document in the patient’s medical record the medical condition that qualifies the patient for the do–not–resuscitate order.

(3) (a) Except as provided in par. (b), emergency medical technicians, first responders 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 patient has revoked the order under s. 154.21.
2. The do–not–resuscitate bracelet appears to have been tampered with or removed.
3. The emergency medical technician, first responder or member of the emergency health care facility knows that the patient is pregnant.

History: 1995 a. 200.

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 technician, first 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 technician, first 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.

154.23 Liability. No physician, emergency medical technician, first 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.

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 expresses to the emergency medical technician, first responder or emergency health care facility personnel the 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.

154.27 Specifications and distribution of do–not–resuscitate bracelet. The department shall establish by rule a uniform standard for the size, color, and design of all do–not–

resuscitate bracelets. 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.

History: 1995 a. 200.

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 shall be fined not more than \$10,000 or imprisoned for not more than 10 years or both.

(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.