

ACT 338

H.B. NO. 1688-86

A Bill for an Act Relating to Medical Treatment Decisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
MEDICAL TREATMENT DECISIONS**

§ -1 **Purpose.** The Legislature finds that all competent persons have the fundamental right to control the decisions relating to their own medical care, including the decision to have medical or surgical means or procedures calculated to prolong their lives provided, withheld, or withdrawn. The Legislature further finds that the artificial prolongation of life for persons with a

terminal condition may secure only a precarious and burdensome existence, while providing nothing medically necessary or beneficial to the patient.

In order that the rights of patients may be respected even after they are no longer able to participate actively in decisions about themselves, the Legislature hereby declares that the laws of the State of Hawaii shall recognize the right of an adult person to make a written declaration instructing his or her physician to provide, withhold, or withdraw life-sustaining procedures in the event of a terminal condition.

§ -2 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Attending physician” means the physician who has primary responsibility for the treatment and care of the patient.

“Declarant” means a person who has executed a declaration in accordance with the requirements of section -3.

“Declaration” means a written document voluntarily executed by the declarant in accordance with the requirements of section -3, regardless of form.

“Health care provider” means a person who is licensed, certified, or otherwise authorized or permitted by the law of this State to administer health care in the ordinary course of business or practice of a profession.

“Incompetent person” means any person who is impaired by reason of mental illness, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person’s health care.

“Life-sustaining procedure” means any medical procedure or intervention except for the provision of fluids, nourishment, medication, or other procedures necessary for patient comfort or pain relief, that when administered to a qualified patient, will serve only to prolong the dying process.

“Physician” means an individual licensed to practice medicine under chapter 453 or chapter 460.

“Qualified patient” means a patient who has executed a declaration in accordance with this chapter, and who has been diagnosed and certified in writing to be in a terminal condition by two physicians who have personally examined the patient, one of whom is the patient’s attending physician. Provided, that if there is more than one attending physician, all such attending physicians must certify in writing that the patient is in a terminal condition.

“Terminal condition” means any incurable or irreversible disease, illness, injury or condition which without the administration of life-sustaining procedure will, as a medical probability, result in death in a relatively short time.

§ -3 **Execution of declaration.** (a) Any competent person who has attained the age of majority may, at any time, execute a written declaration directing the provision, withholding, or withdrawal of life-sustaining procedures in the event such person should have a terminal condition.

(b) The declaration made pursuant to this chapter:

(1) Shall be in writing;

(2) Shall be signed by the person making the declaration, or by another person in the declarant’s presence and at the declarant’s expressed direction;

(3) Shall be dated;

(4) Shall be signed in the presence of two or more witnesses who:

(A) Are at least 18 years of age;

- (B) Are not related to the declarant by blood, marriage, or adoption; and
- (C) Are not the attending physician, an employee of the attending physician, or an employee of the medical care facility in which the declarant is a patient;
- (5) Shall have all signatures notarized at the same time.¹

§ -4 **Suggested form of written declaration.** A declaration executed pursuant to this chapter requesting that medical treatment be withheld or withdrawn may, but need not, be substantially in the following form, and may include other specific directions. Should any of the specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in a declaration are severable.

DECLARATION

A. Statement of Declarant

Declaration made this _____ day of _____ (month, year). I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

If at any time I should have an incurable or irreversible condition certified to be terminal by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that I am unable to make decisions concerning my medical treatment, and that without administration of life-sustaining treatment my death will occur in a relatively short time, and where the application of life-sustaining procedures would serve only to prolong artificially the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, nourishment, or fluids or the performance of any medical procedure deemed necessary to provide me with comfort or to alleviate pain.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expressions of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____

Address _____

B. Statement of Witnesses

I am at least 18 years of age and

- not related to the declarant by blood, marriage, or adoption; and
- not the attending physician, an employee of the attending physician, or an employee of the medical care facility in which the declarant is a patient.

The declarant is personally known to me and I believe the declarant to be of sound mind.

Witness _____

Address _____

Witness _____
 Address _____

C. Notarization

Subscribed, sworn to and acknowledged before me by _____, the declarant, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 19_____.

(SEAL) Signed

 (Official capacity of officer)

§ -5 Presumed validity of declaration. (a) If the qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with section -3 is presumed to be valid.

(b) For the purpose of this act, a physician or medical care facility may presume, in the absence of actual notice to the contrary, that an individual who executed a declaration was of sound mind when the declaration was executed.

(c) The fact of an individual's having executed a declaration shall not be considered an indication of a declarant's mental incompetency. Age of itself shall not bar a determination of competency.

§ -6 Pregnancy. A declaration of a qualified patient diagnosed as pregnant by the attending physician shall be given no force or effect during the course of the pregnancy.

§ -7 Patient's wishes supersede declaration. The desires of a declarant shall at all times supersede the effect of the declaration.

§ -8 Declaration becomes part of medical records. It shall be the responsibility of the declarant to provide for delivery of the notarized declaration to the attending physician. In the event the declarant is comatose, incompetent, or otherwise mentally or physically incapable, any other person may deliver the notarized declaration to the physician. An attending physician who is so notified shall promptly make the declaration a part of the declarant's medical records.

§ -9 Duty to deliver. Any person having a declaration of another in his or her possession and who becomes aware that the declarant is in circumstances under which the terms of the declaration may become applicable, shall deliver the declaration to the declarant's attending physician or to the medical care facility in which the declarant is a patient.

§ -10 Written certification. (a) An attending physician who has been notified of the existence of a declaration executed under this act shall make all reasonable efforts to obtain the notarized declaration and, if the declaration so requests, shall without delay after the diagnosis of a terminal condition of the declarant, take the necessary steps to provide for written certification of the declarant's terminal condition by the attending physician and another physician who has examined the declarant, so that the declarant may be deemed to be a qualified patient, as defined in section -2.

(b) Written certification of a declarant's terminal condition should be substantially in the following form:

CERTIFICATION OF INCOMPETENCE AND TERMINAL CONDITION

We hereby certify that _____ is not,
name of patient

in our professional opinion, able to participate in decisions concerning medical treatment to be administered and has been diagnosed as having an incurable or irreversible disease, illness, injury or condition, specifically _____,

diagnosis

and it is our professional judgment that this terminal condition will result in the death of the patient without the use of life-sustaining procedures.

Signed _____
Attending Physician

Signed _____
Second Attending Physician

(c) All inpatient medical care facilities shall develop a system to visibly identify a qualified patient's chart containing the declaration as set forth in this article.

§ -11 **Transfer to another physician.** (a) An attending physician and any other physician under his or her direction or control, having possession of the patient's declaration or having knowledge that such declaration is part of the patient's record in the medical care facility in which the declarant is receiving care, shall take steps to qualify the patient and shall follow as closely as possible the terms of the declaration.

(b) An attending physician who, because of personal beliefs or conscience, refuses, or is unable, to certify a patient as terminal or to comply with the terms of the patient's declaration shall, without delay, make the necessary arrangements to effect the transfer of the patient, and the appropriate medical records that qualify or would qualify said patient, to another physician chosen by the qualified patient, or by the family of the qualified patient, for effectuation of the terms of the qualified patient's declaration. Such a physician who transfers the patient without delay, or makes a good faith attempt to do so, shall not be subject to criminal prosecution, subject to civil liability, or found to have committed an act of unprofessional conduct for refusal to comply with the terms of the declaration. Transfer under these circumstances shall not constitute abandonment.

§ -12 **Revocation.** A declaration may be revoked at any time by the declarant without regard to the declarant's mental state or competency, by any of the following methods:

- (1) By being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction.
- (2) By a written revocation signed and dated by the declarant expressing his or her intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation.
- (3) By a declarant's verbal expression, in the presence of two adult witnesses, of an intent to revoke the declaration. Such revocation

shall become effective upon communication to the attending physician by the declarant or by both witnesses. 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, of when the attending physician received notification of the revocation.

§ -13 **Mercy killing or euthanasia prohibited.** Nothing in the chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia.

§ -14 **Suicide.** Death resulting from the withholding or withdrawal of life-sustaining procedures from a qualified patient under this chapter does not, for any purpose, constitute suicide.

Execution of a declaration under this chapter does not, for any purpose, constitute attempted suicide.

§ -15 **Effect on life insurance policies.** The execution of a declaration pursuant to section -3 shall not affect the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated by the withholding or withdrawal of life-sustaining procedures from an insured patient in accordance with the provisions of this chapter, notwithstanding any term of the policy to the contrary.

§ -16 **Health care or health insurance.** No physician, medical care facility or other health care provider, nor any health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, mutual nonprofit hospital service corporation, or nonprofit hospital service plan shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

§ -17 **Penalties.** (a) Failure of an attending physician to certify a terminal condition in writing according to section -10 or, once a patient is certified as terminal, failure of the physician to transfer according to section -11, constitutes professional misconduct.

(b) Any person who threatens, directly or indirectly, or coerces, or intimidates any person to execute a declaration directing the withholding or withdrawal of life-sustaining procedure shall be guilty of a class C felony.

(c) Any person who willfully conceals, cancels, defaces, obliterates, or damages another's declaration without the declarant's consent or who falsifies or forges a declarant's revocation of declaration with the intent to create the false impression that the declarant has directed that life-sustaining procedures be utilized for the prolongation of the declarant's life shall be guilty of a misdemeanor.

(d) A physician who willfully fails to record a statement of revocation according to the requirements of section -12 is guilty of a misdemeanor.

§ -18 **Health personnel protections.** In the absence of actual notice of the revocation of a declaration, no health care provider, medical care facility, physician, or other person acting under the direction of an attending physician shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the withholding or the withdrawal of life-sustaining procedures from a patient with a terminal condition in accordance with this act unless the absence of actual notice resulted from the negligence of the health care provider, physician, or other person.

§ -19 **Safeguard provision.** Anyone who has good reason to believe that the withdrawal or withholding of life-sustaining procedures in a particular case:

- (1) Is contrary to the most recent expressed wishes of a declarant;
- (2) Is being proposed pursuant to a declaration that has been falsified, forged, or coerced; or
- (3) Is being considered without the benefit of a revocation which has been unlawfully concealed, destroyed, altered or cancelled;

may petition the family court for appointment of a guardian for such declarant.

§ -20 **Participation in organ transplantation not allowed.** No physician participating in a decision to withdraw or withhold life-sustaining procedures from a declarant may participate in transplanting the vital organs of the declarant to another person.

§ -21 **Procedure in absence of declaration.** (a) In the absence of a declaration, ordinary standards of current medical practice will be followed.

(b) The withholding or withdrawal of life-sustaining procedures pursuant to (a) shall not be considered grounds for any civil or criminal action nor shall it be considered professional misconduct.

§ -22 **Preservation of existing rights.** Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this chapter are cumulative.

§ -23 **No presumption.** This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration to consent to the use or withholding or withdrawal of life-sustaining procedures in the event of a terminal condition.

§ -24 **Retroactive effect.** The declaration of any qualified patient executed prior to the effective date of this chapter shall be give² effect as provided in this chapter.

§ -25 **Recognition of document executed in another state.** A document executed in another state will be considered valid for purposes of this chapter if the document and the execution of said document substantially complies with the requirements of this chapter.

§ -26 **Effect of multiple documents.** In the event a person has one or more valid declarations executed in accordance with this chapter, and/or one or more valid durable powers of attorney executed pursuant to chapter 560, or both, the most recently executed document shall reflect the person's intent.

§ -27 **Severability.** The provisions of this act are severable. If any provision of this chapter or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this chapter which can be given effect without the invalid provision or application.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 13, 1986.)

Notes

1. Punctuation corrected and the word “and” deleted here.
2. So in original.