

ACT 84

H.B. NO. 2507

A Bill for an Act Relating to Medical Treatment Decisions for Psychotic Disorders.

*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 FOR PSYCHOTIC DISORDERS**

§ -1 **Purpose.** The legislature finds that all competent persons have the fundamental right to control decisions relating to their own medical care, including the decision to accept or refuse medical treatment, including the administration of psychotropic drugs, by a health care provider for a psychotic condition.

In order that the rights of patients suffering from a psychotic condition may be respected even when they have lapsed and are not able to participate actively in decisions about themselves or their medical care and treatment, the legislature hereby declares that the laws of the State of Hawaii shall recognize the right of any person aged eighteen or older suffering from a psychotic condition to make a written declaration instructing the person's physician to provide medical treatment, including the administration of psychotropic drugs.

§ -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 suffering from a psychotic condition who has executed a declaration while in a state of remission 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 facility” includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, rehabilitative, or preventive care to any person. The terms include, but is not limited to, health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

“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 suffering from a psychotic condition who is temporarily impaired by reason of having lapsed back into that

psychotic condition to the extent that while temporarily impaired, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person's health care.

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

"Psychotic condition" means any disease, illness, or condition commonly referred to by the medical profession according to ordinary standards of current medical practice as any disorder exhibiting psychotic tendencies, manic-depressive behavior, schizophrenia, or other similar condition which, without the administration of appropriate medical treatment, including the use of psychotropic drugs, would constitute a danger to the patient or to others and would result in a patient being gravely disabled.

**§ -3 Execution of declaration.** (a) Any person aged eighteen or older suffering from a psychotic condition but who is competent and in a state of remission at the time of execution may execute a declaration directing that medical treatment, including the administration of psychotropic drugs, be provided at a time when the person has lapsed and is not able to make decisions regarding medical treatment.

(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; and
- (4) Shall be signed in the presence of two or more witnesses who:
  - (A) Are at least eighteen years of age;
  - (B) Are not related to the declarant by blood, marriage, or adoption;
  - (C) Are not, at the time the declaration is executed, attending physicians, employees of an attending physician, or employees of a health care facility in which the declarant is a patient.

**§ -4 Presumed validity of declaration.** (a) If a patient is incompetent at the time of the decision to give medical treatment, a declaration executed in accordance with section -3 is presumed to be valid.

(b) For the purpose of this chapter, a physician or 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 when the declaration was executed.

(c) The fact of a person's having executed a declaration shall not be considered an indication of a declarant's mental incompetence.

**§ -5 Patient's wishes supersede declaration.** The wishes of a declarant, at all times while the declarant is in a state of remission and is competent, shall supersede the effect of the declaration.

**§ -6 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 after executing the declaration, 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.

§ -7 **Duty to deliver.** Any person having a declaration of another in the person's 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 health care facility in which the declarant is a patient.

§ -8 **Written certification.** (a) An attending physician who has been notified of the existence of a declaration executed under this chapter shall make all reasonable efforts to obtain the notarized declaration and shall ascertain without delay whether the declarant's current condition corresponds to the condition described in the declaration under which the declaration would take effect.

(b) In the event that a patient's condition corresponds to the condition described in the patient's declaration, a written certification of the declarant's condition shall be made a part of the declarant's medical record and shall be substantially in the following form:

CERTIFICATION OF CONDITION SPECIFIED IN PATIENT'S DECLARATION

In my professional opinion, I certify that (name of patient) is not able to participate in decisions concerning medical treatment to be administered and has the following condition: (diagnosis). According to the declaration, (name of patient) wishes to receive medical treatment according to a personal medical treatment plan as specified in the patient's declaration, under these circumstances.

Signed \_\_\_\_\_  
Attending Physician  
Signed \_\_\_\_\_  
Second Attending Physician

§ -9 **Transfer to another physician.** (a) An attending physician and any other physician under the attending physician's direction or control, having possession of the patient's declaration or having knowledge that the declaration is part of the patient's record in the health care facility in which the declarant is receiving care, 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, or who is unable to comply with the terms of the patient's declaration shall make the necessary arrangements to transfer the patient and the appropriate medical records without delay to another physician. A physician who transfers the patient without unreasonable delay, or who makes a good faith attempt to do so, shall not be subject to criminal prosecution or civil liability, and shall not be 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.

(c) Failure of an attending physician to transfer in accordance with this section shall constitute professional misconduct.

§ -10 **Revocation.** A declaration may be revoked by the declarant at any time while the declarant is in a state of remission and is competent by any of the following methods:

- (1) By being canceled, defaced, obliterated, 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

the declarant's 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 unambiguous verbal expression, in the presence of two adult witnesses, of an intent to revoke the declaration. The 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; or
- (4) By a declarant's unambiguous verbal expression to an attending physician.

**§ -11 Health care or health insurance.** No person or entity shall require any person to execute a declaration as a condition for being insured for, or for receiving insurance benefits or health care services.

**§ -12 Criminal penalties.** (a) Any person who threatens, directly or indirectly, or coerces, or intimidates any person to execute a declaration shall be guilty of a class C felony.

(b) 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 no medical treatment be given shall be guilty of a misdemeanor.

(c) A physician who willfully fails to record a statement of revocation according to the requirements of section -10 shall be guilty of a class C felony.

**§ -13 Health personnel protections.** In the absence of actual notice of the revocation of a declaration, no health care provider, health 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 provision of medical treatment to a declarant in accordance with this chapter unless the absence of actual notice resulted from the negligence of the health care provider, physician, or other person.

**§ -14 Safeguard provision.** Anyone who has good reason to believe that the provision of medical treatment in a particular case:

- (1) Is contrary to the most recent expressed wishes of a declarant who was in remission and was competent at the time of expressing the wishes;
  - (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 the declarant.

**§ -15 No presumption.** This chapter creates no presumption concerning the intention of a person who has revoked or has not executed a declaration to receive medical treatment.

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**§ -16 Effect of multiple documents.** Medical treatment instructions contained in a declaration executed in accordance with this chapter shall supersede:

- (1) Any contrary or conflicting instructions given by a proxy or an attorney for health care decisions unless the proxy appointment or the power of attorney expressly provides otherwise; and
- (2) Any instructions in any prior declaration.”

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

(Approved May 27, 1992.)