

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Dowd**

A Bill

SENATE BILL 233

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE TITLE
9 20, CHAPTER 17, SUBCHAPTER 2, THE RIGHTS OF THE TERMINALLY
10 ILL OR PERMANENTLY UNCONSCIOUS ACT; AND FOR OTHER
11 PURPOSES."

Subtitle

14 "AN ACT CONCERNING THE RIGHTS OF THE TERMINALLY ILL OR
15 PERMANENTLY UNCONSCIOUS."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code 20-17-201 is amended to read as follows:
20 "§ 20-17-201. Definitions.

21 As used in this subchapter, unless the context otherwise requires:

22 (1) Attending physician means the physician who has primary
23 responsibility for the treatment and care of the patient;

24 (2) Declaration means a writing executed in accordance with the
25 requirements of § 20-17-202(a);

26 (3) Health care provider means a person who is licensed, certified,
27 or otherwise authorized by the law of this state to administer health care in
28 the ordinary course of business or practice of a profession;

29 (4) Life-sustaining treatment means any medical procedure or
30 intervention that, when administered to a qualified patient, will serve only
31 to prolong the process of dying or to maintain the patient in a condition of
32 permanent unconsciousness;

33 (5) Person means an individual, corporation, business trust, estate,
34 trust, partnership, association, joint venture, government, governmental
35 subdivision or agency, or any other legal or commercial entity;

1 Signature

2 Address

3

4 The declarant voluntarily signed this writing in my presence.

5 Witness

6 Address

7 Witness

8 Address

9

10 (d) A physician or other health care provider who is furnished a copy of
11 the declaration shall make it a part of the declarant's medical record and, if
12 unwilling to comply with the declaration, promptly so advise the declarant.

13 (e) In the case of a qualified patient, the patient's health care
14 proxy, in consultation with the attending physician, shall have the authority
15 to make treatment decisions for the patient including the withholding or
16 withdrawal of life-sustaining procedures."

17

18 SECTION 3. Arkansas Code 20-17-203 is amended to read as follows:

19 "§ 20-17-203. When declaration operative.

20 A declaration in accordance with §20-17-202(a) becomes operative when
21 (i) it is communicated to the attending physician and (ii) the declarant is
22 determined by the attending physician and by another physician in consultation
23 to be permanently unconscious and no longer able to make decisions regarding
24 administration of life-sustaining treatment, or, the declarant is determined
25 by the attending physician to be in a terminal condition and no longer able to
26 make decisions regarding administration of life-sustaining treatment. When the
27 declaration becomes operative, the attending physician and other health care
28 providers shall act in accordance with its provisions or comply with the
29 transfer provisions of § 20-17-207."

30

31 SECTION 4. Arkansas Code 20-17-205 is amended to read as follows:

32 "§ 20-17-205. Recording determination of terminal condition and
33 declaration.

34 When a determination has been made, in accordance with §20-17-201(7),
35 that a declarant is in a terminal condition or is permanently unconscious, the

1 attending physician who knows of a declaration shall record the determination
2 and the terms of the declaration in the declarant's medical record."

3

4 SECTION 5. Arkansas Code 20-17-206 is amended to read as follows:

5 "§ 20-17-206. Treatment of qualified patient.

6 (a) A qualified patient may make decisions regarding life-sustaining
7 treatment as long as the patient is able to do so.

8 (b) This subchapter does not affect the responsibility of the attending
9 physician or other health care provider to provide treatment, including
10 nutrition and hydration, for a patient's comfort care or alleviation of pain.

11 (c) The declaration of a qualified patient known to the attending
12 physician to be pregnant must not be given effect as long as it is possible
13 that the fetus could develop to the point of live birth with continued
14 application of life-sustaining treatment."

15

16 SECTION 6. Arkansas Code 20-17-209 is amended to read as follows:

17 "§ 20-17-209. Penalties.

18 (a) A physician or other health care provider who willfully fails to
19 transfer in accordance with § 20-17-207 is guilty of a Class A misdemeanor.

20 (b) A physician who willfully fails to record the determination of
21 terminal condition or permanent unconsciousness in accordance with § 20-17-205
22 is guilty of a Class A misdemeanor.

23 (c) An individual who willfully conceals, cancels, defaces, or
24 obliterates the declaration of another without the declarant's consent or who
25 falsifies or forges a revocation of the declaration of another is guilty of a
26 Class A misdemeanor.

27 (d) An individual who falsifies or forges the declaration of another,
28 or willfully conceals or withholds personal knowledge of a revocation as
29 provided in § 20-17-204, is guilty of a Class D felony.

30 (e) An individual who requires or prohibits the execution of a
31 declaration as a condition for being insured for, or receiving, health care
32 services is guilty of a Class D felony.

33 (f) A person who coerces or fraudulently induces another to execute a
34 declaration under this subchapter is guilty of a Class D felony.

35 (g) The sanctions provided in this section do not displace any sanction

1 applicable under other law."

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3 SECTION 7. Arkansas Code 20-17-210 is amended to read as follows:

4 "§ 20-17-210. Miscellaneous provisions.

5 (a) Death resulting from the withholding or withdrawal of
6 life-sustaining treatment pursuant to a declaration and in accordance with
7 this subchapter does not constitute, for any purpose, a suicide or homicide.

8 (b) The making of a declaration pursuant to § 20-17-202 does not affect
9 in any manner the sale, procurement, or issuance of any policy of life
10 insurance or annuity, nor does it affect, impair, or modify the terms of an
11 existing policy of life insurance or annuity. A policy of life insurance or
12 annuity is not legally impaired or invalidated in any manner by the
13 withholding or withdrawal of life-sustaining treatment from an insured
14 qualified patient, notwithstanding any term to the contrary.

15 (c) A person may not prohibit or require the execution of a declaration
16 as a condition for being insured for, or receiving, health care services.

17 (d) This subchapter creates no presumption concerning the intention of
18 an individual who has revoked or has not executed a declaration with respect
19 to the use, withholding, or withdrawal of life-sustaining treatment in the
20 event of a terminal condition or permanent unconsciousness.

21 (e) This subchapter does not affect the right of a patient to make
22 decisions regarding use of life-sustaining treatment, so long as the patient
23 is able to do so, or impair or supersede any right or responsibility that a
24 person has to effect the withholding or withdrawal of medical care.

25 (f) This subchapter does not require any physician or other health care
26 provider to take any action contrary to reasonable medical standards.

27 (g) This subchapter does not condone, authorize, or approve mercy killing
28 or euthanasia."

29

30 SECTION 8. All provisions of this act of a general and permanent
31 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
32 Code Revision Commission shall incorporate the same in the Code.

33

34 SECTION 9. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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5 SECTION 10. All laws and parts of laws in conflict with this act are
6 hereby repealed.

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/s/Senator Dowd

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