

ภาคผนวก ก

กฎกระทรวงกำหนดหลักเกณฑ์และวิธีการดำเนินการตามหนังสือแสดงเจตนา
ไม่ประสงค์จะรับบริการสาธารณสุขที่เป็นไปเพียงเพื่อยืดการตายในวาระ
สุดท้ายของชีวิตหรือเพื่อยุติการทรมานจากการเจ็บป่วย พ.ศ. 2553

กฎกระทรวง

กำหนดหลักเกณฑ์และวิธีการดำเนินการตามหนังสือแสดงเจตนาไม่ประสงค์
จะรับบริการสาธารณสุขที่เป็นไปเพียงเพื่อยืดการตายในวาระสุดท้าย
ของชีวิตหรือเพื่อยุติการทรมานจากการเจ็บป่วย พ.ศ. 2553

อาศัยอำนาจตามความในมาตรา 4 และมาตรา 12 วรรคสอง แห่งพระราชบัญญัติ-
สุขภาพแห่งชาติ พ.ศ. 2550 นายกรัฐมนตรีและรัฐมนตรีว่าการกระทรวงสาธารณสุขออก
กฎกระทรวงไว้ดังต่อไปนี้

ข้อ 1 กฎกระทรวงนี้ให้ใช้บังคับเมื่อพ้นกำหนดสองร้อยสิบวันนับแต่วันประกาศ
ในราชกิจจานุเบกษาเป็นต้นไป

ข้อ 2 ในกฎกระทรวงนี้

“หนังสือแสดงเจตนา” หมายความว่า หนังสือซึ่งบุคคลแสดงเจตนาไว้
ล่วงหน้าว่าไม่ประสงค์จะรับบริการสาธารณสุขที่เป็นไปเพียงเพื่อยืดการตายในวาระ
สุดท้ายของชีวิตตน หรือเพื่อยุติการทรมานจากการเจ็บป่วย

“บริการสาธารณสุขที่เป็นไปเพียงเพื่อยืดการตายในวาระสุดท้ายของชีวิต
หรือเพื่อยุติการทรมานจากการเจ็บป่วย” หมายความว่า วิธีการที่ผู้ประกอบวิชาชีพเวช
กรรมนำมาใช้กับผู้ทำหนังสือแสดงเจตนาเพื่อประสงค์จะยืดการตายในวาระสุดท้ายของ
ชีวิตออกไป โดยไม่ทำให้ผู้ทำหนังสือแสดงเจตนาพ้นจากความตายหรือยุติการทรมาน
จากการเจ็บป่วย ทั้งนี้ ผู้ทำหนังสือแสดงเจตนายังคงได้รับการดูแลรักษาแบบ
ประคับประคอง

“วาระสุดท้ายของชีวิต” หมายความว่า ภาวะของผู้ทำหนังสือแสดงเจตนา
อันเกิดจากการบาดเจ็บหรือโรคที่ไม่อาจรักษาให้หายได้และผู้ประกอบวิชาชีพเวชกรรม
ผู้รับผิดชอบการรักษาได้วินิจฉัยจากการพยากรณ์โรคตามมาตรฐานทางการแพทย์ว่า ภาวะ
นั้นนำไปสู่การตายอย่างหลีกเลี่ยงไม่ได้ในระยะเวลาอันใกล้จะถึงและให้หมายความ
รวมถึงภาวะที่มีการสูญเสียหน้าที่อย่างถาวรของเปลือกสมองใหญ่ที่ทำให้ขาด

ความสามารถในการรับรู้และติดต่อสื่อสารอย่างถาวร โดยปราศจากพฤติกรรม การตอบสนองใด ๆ ที่แสดงถึงการรับรู้ได้ จะมีเพียงปฏิกิริยาสนองตอบอัตโนมัติเท่านั้น

“การทรมานจากการเจ็บป่วย” หมายความว่า ความทุกข์ทรมานทางกาย หรือทางจิตใจของผู้ทำหนังสือแสดงเจตนาอันเกิดจากการบาดเจ็บหรือจากโรคที่ไม่อาจรักษาให้หายได้

“ผู้ประกอบวิชาชีพด้านสาธารณสุข” หมายความว่า ผู้ประกอบวิชาชีพตามกฎหมายว่าด้วยสถานพยาบาล

“ผู้ประกอบวิชาชีพเวชกรรม” หมายความว่า ผู้ประกอบวิชาชีพเวชกรรม ตามกฎหมายว่าด้วยวิชาชีพเวชกรรม

ข้อ 3 หนังสือแสดงเจตนาต้องมีความชัดเจนเพียงพอที่จะดำเนินการตามความประสงค์ของผู้ทำหนังสือดังกล่าวได้ โดยมีข้อมูลเป็นแนวทางในการทำหนังสือ ดังต่อไปนี้

- 1) รายการที่แสดงข้อมูลของผู้ทำหนังสือแสดงเจตนาโดยระบุชื่อ นามสกุล อายุ หมายเลขบัตรประจำตัวประชาชน และที่อยู่หรือหมายเลขโทรศัพท์ที่สามารถติดต่อได้
- 2) วัน เดือน ปีที่ทำหนังสือแสดงเจตนา
- 3) ชื่อ นามสกุล หมายเลขบัตรประจำตัวประชาชนของพยาน และความเกี่ยวข้องกับผู้ทำหนังสือแสดงเจตนา
- 4) ระบุประเภทของบริการสาธารณสุขที่ไม่ต้องการจะได้รับ
- 5) ในกรณีที่ผู้ทำหนังสือแสดงเจตนาให้ผู้อื่นเขียนหรือพิมพ์หนังสือแสดงเจตนาให้ระบุชื่อ นามสกุล และหมายเลขบัตรประจำตัวประชาชนของผู้เขียนหรือผู้พิมพ์ไว้ด้วย

หนังสือแสดงเจตนาต้องลงลายมือชื่อหรือลายพิมพ์นิ้วมือของผู้ทำหนังสือแสดงเจตนา พยานและผู้เขียนหรือผู้พิมพ์ไว้ด้วย

ผู้ทำหนังสือแสดงเจตนาอาจระบุชื่อบุคคลเพื่อทำหน้าที่อธิบายความประสงค์ที่แท้จริงผู้ทำหนังสือแสดงเจตนาที่ระบุไว้ไม่ชัดเจน บุคคลผู้ถูกระบุชื่อดังกล่าว

ต้องลงลายมือชื่อหรือลายพิมพ์นิ้วมือ และหมายเลขบัตรประจำตัวประชาชนไว้ในหนังสือแสดงเจตนาด้วย

หนังสือแสดงเจตนาอาจระบุรายละเอียดอื่น ๆ เช่น ความประสงค์ในการเสียชีวิต ณ สถานที่ใด ความประสงค์ที่จะได้รับการเยียวยาทางจิตใจ และการปฏิบัติตามประเพณีและความเชื่อทางศาสนาและให้สถานบริการสาธารณสุขให้ความร่วมมือตามสมควร

ข้อ 4 หนังสือแสดงเจตนาจะทำ ณ สถานที่ใดก็ได้

ในกรณีที่ผู้ทำหนังสือแสดงเจตนาประสงค์จะทำหนังสือแสดงเจตนา ณ สถานบริการสาธารณสุขให้ผู้ประกอบวิชาชีพด้านสาธารณสุขและเจ้าหน้าที่ที่เกี่ยวข้องอำนวยความสะดวกตามสมควร

ข้อ 5 เมื่อผู้ทำหนังสือแสดงเจตนาเข้ารับการรักษาตัวในสถานบริการสาธารณสุขให้นำหนังสือแสดงเจตนายื่นต่อผู้ประกอบวิชาชีพด้านสาธารณสุขของสถานบริการสาธารณสุขนั้น โดยไม่ชักช้า

ผู้ทำหนังสือแสดงเจตนาอาจยกเลิกหรือเปลี่ยนแปลงหนังสือแสดงเจตนาได้ในกรณีที่มีการแสดงหนังสือแสดงเจตนาหลายฉบับ ให้ถือฉบับหลังสุดที่ได้ยื่นให้ผู้ประกอบวิชาชีพเวชกรรมผู้รับผิดชอบการรักษาเป็นฉบับที่มีผลบังคับ

ข้อ 6 หลักเกณฑ์และวิธีการดำเนินการตามหนังสือแสดงเจตนาเมื่อวาระสุดท้ายของชีวิตใกล้จะมาถึงหรือเพื่อยุติการทรมานจากการเจ็บป่วยให้ดำเนินการดังต่อไปนี้

1) ในกรณีที่ผู้ทำหนังสือแสดงเจตนามีสติสัมปชัญญะดีพอที่จะสื่อสารได้ตามปกติให้ผู้ประกอบวิชาชีพเวชกรรมผู้รับผิดชอบการรักษาอธิบายให้ผู้ทำหนังสือแสดงเจตนาทราบถึงภาวะและความเป็นไปของโรคในขณะนั้นเพื่อขอคำยืนยันหรือปฏิเสธก่อนที่จะปฏิบัติตามหนังสือแสดงเจตนาดังกล่าว

2) ในกรณีที่ผู้ทำหนังสือแสดงเจตนาไม่มีสติสัมปชัญญะดีพอที่จะสื่อสารได้ตามปกติหากมีบุคคลตาม ข้อ 3 วรรคสาม หรือญาติของผู้ทำหนังสือแสดงเจตนา ให้ผู้ประกอบวิชาชีพเวชกรรมผู้รับผิดชอบการรักษาอธิบายถึงภาวะและความเป็นไปของโรคให้บุคคลดังกล่าวทราบ และแจ้งรายละเอียดเกี่ยวกับการดำเนินการตามหนังสือ

แสดงเจตนาของผู้ทำหนังสือแสดงเจตนาก่อนที่จะปฏิบัติตามหนังสือแสดงเจตนาดังกล่าว

3) ในกรณีที่มีปัญหาเกี่ยวกับการดำเนินการตามหนังสือแสดงเจตนา ให้ผู้ประกอบวิชาชีพเวชกรรมผู้รับผิดชอบการรักษาปรึกษากับบุคคลตามข้อ 3 วรรคสาม หรือญาติของผู้ทำหนังสือแสดงเจตนา นั้น โดยคำนึงถึงเจตนาของผู้ทำหนังสือแสดงเจตนา

4) ในกรณีที่ผู้ทำหนังสือแสดงเจตนาอยู่ในระหว่างการตั้งครรภ์ ให้ดำเนินการตามหนังสือแสดงเจตนาได้เมื่อผู้นั้นพ้นจากสภาพการตั้งครรภ์

๔ ข้อ 7 ให้เลขานุการ โดยความเห็นชอบของคณะกรรมการสุขภาพแห่งชาติออกประกาศกำหนดแนวทางการปฏิบัติงานของสถานบริการสาธารณสุข ผู้ประกอบวิชาชีพด้านสาธารณสุข และเจ้าหน้าที่ของสถานบริการสาธารณสุขตามกฎหมายนี้ พร้อมทั้งตัวอย่างหนังสือแสดงเจตนาโดยประกาศในราชกิจจานุเบกษา

ภาคผนวก ข

Illinois Living Will Act

Illinois Living Will Act

(755 ILCS 35) Illinois Living Will Act

Sec. 1 Purpose: (755 ILCS 35/1)

The legislature finds that persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have death delaying procedures withheld or withdrawn in instances of a terminal condition.

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 this State shall recognize the right of a person to make a written declaration instructing his or her physician to withhold or withdraw death delaying procedures in the event of a terminal condition. (Source: P.A. 85 860.)

Sec. 2 Definitions: (755 ILCS 35/2)

(a) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(b) "Declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of Section 3.

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

(d) "Death delaying procedure" means any medical procedure or intervention which, when applied to a qualified patient, in the judgement of the attending physician would serve only to postpone the moment of death. In appropriate circumstances, such procedures include, but are not limited to, assisted ventilation,

artificial kidney treatments, intravenous feeding or medication, blood transfusions, tube feeding and other procedures of greater or lesser magnitude that serve only to delay death. However, this Act does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain. Nutrition and hydration shall not be withdrawn or withheld from a qualified patient if the withdrawal or withholding would result in death solely from dehydration or starvation rather than from the existing terminal condition.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.

(f) "Physician" means a person licensed to practice medicine in all its branches.

(g) "Qualified patient" means a patient who has executed a declaration in accordance with this Act and who has been diagnosed and verified in writing to be afflicted with a terminal condition by his or her attending physician who has personally examined the patient. A qualified patient has the right to make decisions regarding death delaying procedures as long as he or she is able to do so.

(h) "Terminal condition" means an incurable and irreversible condition which is such that death is imminent and the application of death delaying procedures serves only to prolong the dying process. (Source: P.A. 95 331, eff. 8 21 07.)

Sec. 3 Execution of a Document. (755 ILCS 35/2)

(a) An individual of sound mind and having reached the age of majority or having obtained the status of an emancipated person pursuant to the Emancipation of Minors Act, as now or hereafter amended, may execute a document directing that if he is suffering from a terminal condition, then death delaying procedures shall not be utilized for the prolongation of his life.

(b) The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by 2 individuals 18 years of age or older.

(c) The declaration of a qualified patient diagnosed as pregnant by the attending physician shall be given no force and effect as long as in the opinion of the attending physician it is possible that the fetus could develop to the point of live birth with the continued application of death delaying procedures.

(d) If the patient is able, it shall be the responsibility of the patient to provide for notification to his or her attending physician of the existence of a declaration, to provide the declaration to the physician and to ask the attending physician whether he or she is willing to comply with its provisions. An attending physician who is so notified shall make the declaration, or copy of the declaration, a part of the patient's medical records. If the physician is at any time unwilling to comply with its provisions, the physician shall promptly so advise the declarant. If the physician is unwilling to comply with its provisions and the patient is able, it is the patient's responsibility to initiate the transfer to another physician of the patient's choosing. If the physician is unwilling to comply with its provisions and the patient is at any time not able to initiate the transfer, then the attending physician shall without delay notify the person with the highest priority, as set forth in this subsection, who is available, able, and willing to make arrangements for the transfer of the patient and the appropriate medical records to another physician for the effectuation of the patient's declaration. The order of priority is as follows: (1) any person authorized by the patient to make such arrangements, (2) a guardian of the person of the patient, without the necessity of obtaining a court order to do so, and (3) any member of the patient's family.

(e) The declaration may, but need not, be in the following form, and in addition may include other specific directions. Should any specific direction be determined 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 the declaration are severable.

DECLARATION

This declaration is made this . . . day of . . . (month, year). I, . . ., being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed.

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

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

Signed . . .

City, County and State of Residence . . .

The declarant is personally known to me and I believe him or her to be of sound mind. I saw the declarant sign the declaration in my presence (or the declarant acknowledged in my presence that he or she had signed the declaration) and I signed the declaration as a witness in the presence of the declarant. I did not sign the declarant's signature above for or at the direction of the declarant. At the date of this instrument, I am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or, to the best of my knowledge and belief, under any

will of declarant or other instrument taking effect at declarant's death, or directly financially responsible for declarant's medical care.

Witness . . .

Witness . . . (Source: P.A. 95 331, eff. 8 21 07.)

Sec. 4 Recording of a Terminal Condition. (755 ILCS 35/4)

Upon determining that the declarant has a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record. A physician who records in writing a terminal condition under this Section is presumed to be acting in good faith. Unless it is alleged and proved that his action violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred. (Source: P.A. 85 860.)

Sec. 5 Revocation. (755 ILCS 35/5)

(a) A declaration may be revoked at any time by the declarant, without regard to declarant's mental or physical condition, by any of the following methods:

(1) By being obliterated, burnt, torn or otherwise destroyed or defaced in a manner indicating intention to cancel;

(2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant; or

(3) By a oral or any other expression of the intent to revoke the declaration, in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression of intent was made.

(b) A revocation is effective upon communication to the attending physician by the declarant or by another who witnessed the revocation. The attending

physician shall record in the patient's medical record the time and date when and the place where he or she received notification of the revocation.

(c) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this Section unless that person has actual knowledge of the revocation. (Source: P.A. 85 860.)

Sec. 6 Physician Responsibilities. (755 ILCS 35/6)

An attending physician who has been notified of the existence of a declaration executed under this Act, without delay after the diagnosis of a terminal condition of the patient, shall take the necessary steps to provide for written recording of the patient's terminal condition, so that the patient may be deemed to be a qualified patient under this Act, or shall notify the patient or, if the patient is unable to initiate a transfer, the person or persons described in subsection (d) of Section 3 in the order of priority stated therein that the physician is unwilling to comply with the provisions of the patient's declaration. In the event of the patient's death as determined by a physician, all medical care is to be terminated unless the patient is an organ donor, in which case appropriate organ donation treatment may be applied or continued temporarily. (Source: P.A. 93 794, eff. 7 22 04.)

Sec. 7 Immunity. (755 ILCS 35/7)

The desires of a qualified patient shall at all times supersede the effect of the declaration.

A physician or other health care provider may presume, in the absence of knowledge to the contrary, that a declaration complies with this Act and is valid.

No physician, health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of death delaying procedures from a qualified patient

pursuant to a declaration which purports to have been made in accordance with this Act shall as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct. (Source: P.A. 85 860.)

Sec. 8 Penalties. (755 ILCS 35/8)

(a) Any person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another without such declarant's consent or who falsifies or forges a revocation of the declaration of another or who willfully fails to comply with Section 6 shall be civilly liable.

(b) Any person who coerces or fraudulently induces another to execute a declaration or falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 5 with the intent to cause a withholding or withdrawal of death delaying procedures contrary to the wishes of the qualified patient and thereby, because of such act, directly causes death delaying procedures to be withheld or withdrawn and death to another thereby be hastened, shall be subject to prosecution for involuntary manslaughter.

(c) A physician or other health care provider who willfully fails to notify the health care facility or fails to comply with Section 6 is guilty of engaging in unethical and unprofessional conduct in violation of paragraph (A) (5) of Section 22 of the Medical Practice Act of 1987.

(d) A physician who willfully fails to record the determination of terminal condition in accordance with Section 4, without giving the notice required by Section 6 of his unwillingness to comply with the provisions of the patient's declaration, is guilty of willfully omitting to file or record medical reports as required by law in violation of paragraph (A) (22) of Section 22 of the Medical Practice Act of 1987.

(e) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a class A misdemeanor.

(f) The penalties provided in this Section do not displace any penalty applicable under other law. (Source: P.A. 90 14, eff. 7 1 97.)

Sec. 9 General provisions. (755 ILCS 35/9)

(a) The withholding or withdrawal of death delaying procedures from a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute a suicide.

(b) The making of a declaration pursuant to Section 3 shall not affect in any manner 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 in any manner by the withholding or withdrawal of death delaying procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health care facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self insured employe welfare benefit plan, nonprofit medical service corporation or mutual nonprofit hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

(d) Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of death delaying procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

(e) This Act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of death delaying procedures in the event of a terminal condition.

(f) Nothing in this Act shall be construed to condone, authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

(g) An instrument executed before the effective date of this Act that substantially complies with paragraph (e) of Section 3 shall be given effect pursuant to the provisions of this Act.

(h) A declaration executed in another state in compliance with the law of that state or this State is validly executed for purposes of this Act, and such declaration shall be applied in accordance with the provisions of this Act. (Source: P.A. 85 860.)

Sec. 10 (755 ILCS 35/10)

This Act shall be known and may be cited as the "Illinois Living Will Act". (Source: P.A. 83 824.)

ภาคผนวก ก

The Oregon Death With Dignity Act

The Oregon Death With Dignity Act

Oregon Revised Statutes

(General Provisions)

(Section 1)

Note: The division headings, subdivision headings and leadlines for 127.800 to 127.890, 127.895 and 127.897 were enacted as part of Ballot Measure 16 (1994) and were not provided by Legislative Counsel.

127.800 §1.01. Definitions. The following words and phrases, whenever used in ORS 127.800 to 127.897, have the following meanings:

(1) “Adult” means an individual who is 18 years of age or older.

(2) “Attending physician” means the physician who has primary responsibility for the care of the patient and treatment of the patient’s terminal disease.

(3) “Capable” means that in the opinion of a court or in the opinion of the patient’s attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

(4) “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease.

(5) “Counseling” means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) “Health care provider” means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) “Informed decision” means a decision by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

- (a) His or her medical diagnosis;
- (b) His or her prognosis;
- (c) The potential risks associated with taking the medication to be prescribed;
- (d) The probable result of taking the medication to be prescribed; and
- (e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.

(8) “Medically confirmed” means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient’s relevant medical records.

(9) “Patient” means a person who is under the care of a physician.

(10) “Physician” means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(11) “Qualified patient” means a capable adult who is a resident of Oregon and has satisfied the requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

(12) “Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. [1995 c.3 §1.01; 1999 c.423 §1]

(Written Request for Medication to End One's Life in a Humane and Dignified Manner)

(Section 2)

127.805 §2.01. Who may initiate a written request for medication.

(1) An adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.

(2) No person shall qualify under the provisions of ORS 127.800 to 127.897 solely because of age or disability. [1995 c.3 §2.01; 1999 c.423 §2]

127.810 §2.02. Form of the written request.

(1) A valid request for medication under ORS 127.800 to 127.897 shall be in substantially the form described in ORS 127.897, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage or adoption;

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Department of Human Services by rule. [1995 c.3 §2.02] (Safeguards)

(Section 3)

127.815 §3.01. Attending physician responsibilities.

(1) The attending physician shall:

- (a) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;
- (b) Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;
- (c) To ensure that the patient is making an informed decision, inform the patient of:
 - (A) His or her medical diagnosis;
 - (B) His or her prognosis;
 - (C) The potential risks associated with taking the medication to be prescribed;
 - (D) The probable result of taking the medication to be prescribed; and
 - (E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;
- (d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;
- (e) Refer the patient for counseling if appropriate pursuant to ORS 127.825;
- (f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to ORS 127.800 to 127.897 and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day waiting period pursuant to ORS 127.840;

(i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to 127.897, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of ORS 127.855;

(k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897 prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l) (A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided the attending physician is registered as a dispensing physician with the Board of Medical Examiners, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule; or

(B) With the patient's written consent:

(i) Contact a pharmacist and inform the pharmacist of the prescription; and

(ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient.

(2) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate. [1995 c.3 §3.01; 1999 c.423 §3]

127.820 §3.02. Consulting physician confirmation. Before a patient is qualified under ORS 127.800 to 127.897, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made an informed decision. [1995 c.3 §3.02]

127.825 §3.03. Counseling referral. If in the opinion of the attending physician or the consulting physician a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. [1995 c.3 §3.03; 1999 c.423 §4]

127.830 §3.04. Informed decision. No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision as defined in ORS 127.800 (7). Immediately prior to writing a prescription for medication under ORS 127.800 to 127.897, the attending physician shall verify that the patient is making an informed decision. [1995 c.3 §3.04]

127.835 §3.05. Family notification. The attending physician shall recommend that the patient notify the next of kin of his or her request for medication pursuant to ORS 127.800 to 127.897. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason. [1995 c.3 §3.05; 1999 c.423 §6]

127.840 §3.06. Written and oral requests. In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician no less than fifteen (15) days after making the initial oral

request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the patient an opportunity to rescind the request. [1995 c.3 §3.06]

127.845 §3.07. Right to rescind request. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under ORS 127.800 to 127.897 may be written without the attending physician offering the qualified patient an opportunity to rescind the request. [1995 c.3 §3.07]

127.850 §3.08. Waiting periods. No less than fifteen (15) days shall elapse between the patient's initial oral request and the writing of a prescription under ORS 127.800 to 127.897. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription under ORS 127.800 to 127.897. [1995 c.3 §3.08]

127.855 §3.09. Medical record documentation requirements. The following shall be documented or filed in the patient's medical record:

- (1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;
- (2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;
- (3) The attending physician's diagnosis and prognosis, determination that the patient is capable, acting voluntarily and has made an informed decision;
- (4) The consulting physician's diagnosis and prognosis, and verification that the patient is capable, acting voluntarily and has made an informed decision;
- (5) A report of the outcome and determinations made during counseling, if performed;
- (6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request pursuant to ORS 127.840; and

(7) A note by the attending physician indicating that all requirements under ORS 127.800 to 127.897 have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed. [1995 c.3 §3.09]

127.860 §3.10. Residency requirement. Only requests made by Oregon residents under ORS 127.800 to 127.897 shall be granted. Factors demonstrating Oregon residency include but are not limited to:

- (1) Possession of an Oregon driver license;
- (2) Registration to vote in Oregon;
- (3) Evidence that the person owns or leases property in Oregon; or
- (4) Filing of an Oregon tax return for the most recent tax year. [1995 c.3 §3.10; 1999 c.423 §8]

127.865 §3.11. Reporting requirements.

(1) (a) The Department of Human Services shall annually review a sample of records maintained pursuant to ORS 127.800 to 127.897.

(b) The department shall require any health care provider upon dispensing medication pursuant to ORS 127.800 to 127.897 to file a copy of the dispensing record with the department.

(2) The department shall make rules to facilitate the collection of information regarding compliance with ORS 127.800 to 127.897. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

(3) The department shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [1995 c.3 §3.11; 1999 c.423 §9; 2001 c.104 §40]

127.870 §3.12. Effect on construction of wills, contracts and statutes.

(1) No provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a

request for medication to end his or her life in a humane and dignified manner, shall be valid.

(2) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [1995 c.3 §3.12]

127.875 §3.13. Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy. [1995 c.3 §3.13]

127.880 §3.14. Construction of Act. Nothing in ORS 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. [1995 c.3 §3.14] (Immunities and Liabilities)

(Section 4)

127.885 §4.01. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions. Except as provided in ORS 127.890:

(1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with ORS 127.800 to 127.897. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.

(2) No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges,

loss of membership or other penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to 127.897.

(3) No request by a patient for or provision by an attending physician of medication in good faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(4) No health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under ORS 127.800 to 127.897, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(5) (a) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in ORS 127.800 to 127.897.

(b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider may subject another health care provider to the sanctions stated in this paragraph if the sanctioning health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to 127.897 that it prohibits participation in ORS 127.800 to 127.897:

(A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the sanctioning health

care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(B) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in ORS 127.800 to 127.897 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(C) Termination of contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in ORS 127.800 to 127.897 while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subparagraph shall be construed to prevent:

(i) A health care provider from participating in ORS 127.800 to 127.897 while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(ii) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions pursuant to paragraph (b) of this subsection must follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For purposes of this subsection:

(A) “Notify” means a separate statement in writing to the health care provider specifically informing the health care provider prior to the provider’s participation in ORS 127.800 to 127.897 of the sanctioning health care provider’s policy about participation in activities covered by ORS 127.800 to 127.897.

(B) “Participate in ORS 127.800 to 127.897” means to perform the duties of an attending physician pursuant to ORS 127.815, the consulting physician function pursuant to ORS 127.820 or the counseling function pursuant to ORS 127.825. “Participate in ORS 127.800 to 127.897” does not include:

(i) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(ii) Providing information about the Oregon Death with Dignity Act to a patient upon the request of the patient;

(iii) Providing a patient, upon the request of the patient, with a referral to another physician; or

(iv) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(6) Suspension or termination of staff membership or privileges under subsection (5) of this section is not reportable under ORS 441.820. Action taken pursuant to ORS 127.810, 127.815, 127.820 or 127.825 shall not be the sole basis for a report of unprofessional or dishonorable conduct under ORS 677.415 (2) or (3).

(7) No provision of ORS 127.800 to 127.897 shall be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community. [1995 c.3 §4.01; 1999 c.423 §10]

Note: As originally enacted by the people, the leadline to section 4.01 read “Immunities.” The remainder of the leadline was added by editorial action.

127.890 §4.02. Liabilities.

(1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death shall be guilty of a Class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient's life, or to destroy a rescission of such a request, shall be guilty of a Class A felony.

(3) Nothing in ORS 127.800 to 127.897 limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in ORS 127.800 to 127.897 do not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of ORS 127.800 to 127.897. [1995 c.3 §4.02]

127.892 Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to the provisions of ORS 127.800 to 127.897 in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim. [1999 c.423 §5a] (Severability)

(Section 5)

127.895 §5.01. Severability. Any section of ORS 127.800 to 127.897 being held invalid as to any person or circumstance shall not affect the application of any other section of ORS 127.800 to 127.897 which can be given full effect without the invalid section or application. [1995 c.3 §5.01] (Form of the Request)

(Section 6)

127.897 §6.01. Form of the request. A request for a medication as authorized by ORS 127.800 to 127.897 shall be in substantially the following form:

**Request for Medication to End My Life in a Humane and
Dignified Manner**

I, . . . , am an adult of sound mind.

I am suffering from . . . , which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

Initial One:

. . . I have informed my family of my decision and taken their opinions into consideration.

. . . I have decided not to inform my family of my decision.

. . . I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: . . .

Dated: . . .

Declaration of Witnesses

We declare that the person signing this request:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed this request in our presence;
- (c) Appears to be of sound mind and not under duress, fraud or undue

influence;

- (d) Is not a patient for whom either of us is attending physician.

‘ . . .Witness 1/Date

. . .Witness 2/Date

Note: One witness shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall not be entitled to any portion of the person’s estate upon death and shall not own, operate or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

[1995 c.3 §6.01; 1999 c.423 §11]

Penalties

127.990: [Formerly part of 97.990; repealed by 1993 c.767 §29]

127.995 Penalties.

(1) It shall be a Class A felony for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting the principal’s desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the principal.

(2) Except as provided in subsection (1) of this section, it shall be a Class A misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a health care decision. [Formerly 127.585]

ภาคผนวก ง

The Advance Medical Directive Act 1996

(Chapter 4 A)

The Advance Medical Directive Act 1996**(Chapter 4 A)**

Short title

1. (1) This Act may be cited as the Advance Medical Directive Act.

(2) This Act shall not apply to any act done or any directive or instrument made or executed before 1st July 1997.

Interpretation

2. In this Act, unless the context otherwise requires--

“directive” means an advance medical directive made under section 3;

“Director” means the Director of Medical Services;

“extraordinary life-sustaining treatment” means any medical procedure or measure which, when administered to a terminally ill patient, will only prolong the process of dying when death is imminent, but excludes palliative care;

“medical practitioner” means a person who is registered, or deemed to be registered, as a medical practitioner under the Medical Registration Act (Cap. 174);

“palliative care” includes--

(a) the provision of reasonable medical procedures for the relief of pain, suffering or discomfort; and

(b) the reasonable provision of food and water;

“patient” means any person (whether or not he is undergoing any medical treatment, care or therapy) who is not mentally disordered, who has attained the age of 21 years and who has made or desires to make a directive in accordance with this Act;

“recovery”, in relation to a terminal illness, includes a remission of symptoms or effects of the illness;

“register” means the register of advance medical directives established under section 6;

“Registrar” means the Registrar of Advance Medical Directives appointed under section 6 and shall include a Deputy Registrar and an Assistant Registrar;

“specialist” means a medical practitioner who possesses such postgraduate medical qualifications as the Director may recognise for the purposes of this Act;

“terminal illness” means an incurable condition caused by injury or disease from which there is no reasonable prospect of a temporary or permanent recovery where⁴-

(a) death would, within reasonable medical judgment, be imminent regardless of the application of extraordinary life-sustaining treatment; and

(b) the application of extraordinary life-sustaining treatment would only serve to postpone the moment of death of the patient.

Power to make advance medical directive

3. (1) A person who is not mentally disordered, who has attained the age of 21 years and who desires not to be subjected to extraordinary life-sustaining treatment in the event of his suffering from a terminal illness, may at any time make an advance medical directive in the prescribed form.

(2) Subject to subsection (3), the directive must be witnessed by 2 witnesses present at the same time one of whom shall be the patient’s family medical practitioner or any other practitioner of his choice; and the other shall be a person who has attained the age of 21 years.

(3) A witness shall be a person who to the best of his knowledge--

(a) is not a beneficiary under the patient’s will or any policy of insurance;

(b) has no interest under any instrument under which the patient is the donor, settlor or grantor;

(c) would not be entitled to an interest in the estate of the patient on the patient's death intestate;

(d) would not be entitled to an interest in the moneys of the patient held in the Central Provident Fund or other provident fund on the death of that patient; and

(e) has not registered an objection under section 10 (1).

Duty of witness

4. Before witnessing the execution of the directive on the prescribed form, a witness who is a medical practitioner shall take reasonable steps in the circumstances to ensure that the patient--

(a) is not mentally disordered;

(b) has attained the age of 21 years;

(c) has made the directive voluntarily and without inducement or compulsion; and

(d) has been informed of the nature and consequences of making the directive.

Registration of directives

5. (1) Any person who has made a directive in accordance with section 3 shall register his directive with the Registrar.

(2) Upon receipt of the directive registered under subsection (1), the Registrar shall issue to the person who made the directive an acknowledgment in the prescribed form.

(3) No person shall act on a directive if it has not been registered in accordance with this section.

Registry of directives and objections

6. (1) The Director shall cause a register of advance medical directives to be established and maintained for the purposes of this Act and which shall comprise--

- (a) all directives registered under section 5;
- (b) all revocations of directives registered under section 7;
- (c) all objections of medical practitioners registered under section 10 (1).

(2) The Minister shall appoint a Registrar, a Deputy Registrar and an Assistant Registrar of Advance Medical Directives and such other officers and employees as he may consider necessary for the purposes of this Act.

(3) The register shall be kept confidential and shall not be disclosed to any person except to the following:

- (a) the person who made the directive or such other person as he may in writing authorise;
- (b) the Registrar and other persons appointed to maintain and administer the register;
- (c) the medical practitioner responsible for the treatment of the person who made the directive only if a certificate in respect of that person has been forwarded to the Registrar in accordance with section 9 (1).

(4) Any person who wilfully destroys, mutilates or makes any unauthorised alteration or manipulation in the register shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both.

Revocation of directive

7. (1) Any patient who has made a directive may, in the presence of at least one witness, revoke the directive--

- (a) in writing;
- (b) orally; or
- (c) in any other way in which the patient can communicate.

(2) As far as may be practicable, the revocation shall be registered with the Registrar.

(3) Where a revocation is made in accordance with subsection (1), the patient (if practicable) and each witness shall notify the Registrar in writing of the revocation with full particulars of the name, address and telephone number of the patient and of the witness and the time, date and place where the revocation was made.

(4) It shall be the duty of any other person who has witnessed a revocation, whether made in writing, orally or in any other way in which the patient can communicate, to inform the Registrar of that fact.

(5) Upon receipt of the notice of revocation (if there is more than one notice, the first notice), the Registrar shall issue to that person an acknowledgment in the prescribed form and shall mark the directive as a revoked directive in the register.

Panel of specialists

8. (1) The Minister shall appoint a panel of not less than 20 specialists who have each not less than 10 years' experience in medical practice.

(2) The Minister shall, in appointing the members of the panel, have regard to the need to appoint specialists who possess the requisite skills, knowledge and qualifications in diagnosing terminal illness.

(3) Every member of the panel shall, except where his appointment is revoked by the Minister under subsection (4) or he resigns during the period of his appointment, be appointed for a period of 3 years or for such shorter period as the Minister may, in any case, determine and shall be eligible for reappointment.

(4) The Minister may at any time revoke the appointment of a member of the panel on the ground of his unfitness to continue in office or incapacity to perform the duties thereof.

Certification of terminal illness

9. (1) Where a medical practitioner, who is responsible for the treatment of any person, has reason to believe that the person--

(a) is suffering from a terminal illness;

(b) requires extraordinary life-sustaining treatment; and

(c) is unconscious or incapable of exercising rational judgment, the medical practitioner shall

(i) determine and certify in the prescribed form that the person is suffering from a terminal illness and the reasons for the determination; and

(ii) forward the certificate to the Registrar with a request that a search of the register be conducted in order to ascertain whether the person has made a directive which is in force.

(2) Upon receipt of a request made under subsection (1), the Registrar shall cause a search of the register to be conducted in order to ascertain whether the person has made a directive which is in force and shall thereafter inform the medical practitioner accordingly.

(3) Where the Registrar informs the medical practitioner responsible for the treatment of the person who has been certified to be terminally ill that the patient has made a directive which is in force, that medical practitioner shall obtain, in the prescribed form, the opinion of 2 other medical practitioners as to whether they agree with the determination that the patient is terminally ill.

(4) Where the medical practitioner responsible for the treatment of the patient--

(a) is not a specialist, the 2 other medical practitioners referred to in subsection (3) shall both be specialists;

(b) is a specialist, at least one of the 2 other medical practitioners referred to in subsection (3) shall be a specialist.

(5) Where the opinions of the 2 medical practitioners referred to in subsection (3) are not unanimously in agreement that the patient is terminally ill, the issue shall be referred for determination to a committee of 3 specialists (referred to in this section as the committee) appointed by the Director from among the panel of specialists referred to in section 8.

(6) A patient shall, on a reference to the committee, be determined to be terminally ill only on the unanimous decision of the committee.

(7) If the committee is unable to reach a unanimous decision, the patient shall be presumed not to be terminally ill.

(8) The committee's determination shall be recorded in the prescribed form and sent to the medical practitioner responsible for the treatment of the patient.

(9) No medical practitioner shall certify or participate in the determination or certification that the patient is terminally ill if the medical practitioner--

(a) is a beneficiary under the patient's will or any policy of insurance;

(b) has an interest under any instrument under which the patient is the donor, settlor or grantor;

(c) would be entitled to an interest in the moneys of the patient held in the Central Provident Fund or other provident fund on the death of that patient; or

(d) has registered an objection under section 10 (1).

Duty of medical practitioner

10. (1) A medical practitioner or any person who acts under the instructions of a medical practitioner, who for any reason objects to acting on a directive shall register his objection in the prescribed form to this effect and register it with the Registrar and such objection may be revoked by notifying the Registrar in the prescribed form.

(2) Where a person who has made a directive in accordance with section 3 has been determined in accordance with section 9 to be suffering from a terminal illness, it shall be the duty of the medical practitioner responsible for his treatment (unless he has registered his objection under subsection (1)) to act in accordance with the directive unless there is reasonable ground to believe--

(a) that a notice of revocation under section 7 has been received by the registry or such revocation has been sent to the registry;

(b) that the person has, whether in writing, orally or in any other way, communicated to any medical practitioner his intention to revoke the directive; or

(c) that the person was not, at the time of making the directive, capable of understanding the nature and consequences of the directive.

(3) Before a medical practitioner acts in accordance with a directive, he shall--

(a) ascertain from the Registrar that the directive has been registered under section 5 and is in force;

(b) ensure that the patient has been certified to be terminally ill in accordance with section 9; and

(c) as far as may be practicable determine and certify in writing whether the patient is pregnant with a foetus which will probably develop to the point of live birth.

(4) No medical practitioner shall act in accordance with a directive if the medical practitioner--

(a) is a beneficiary under the patient's will or any policy of insurance;

(b) has an interest under any instrument under which the patient is the donor, settlor or grantor; or

(c) would be entitled to an interest in the moneys of the patient held in the Central Provident Fund or other provident fund on the death of that patient.

(5) Where a medical practitioner has registered his objection under subsection (1) or is disqualified under subsection (4), he shall, in the circumstances referred to in subsection (2), take all reasonable steps as soon as practicable for the care of the patient to be transferred to another medical practitioner who has not registered such an objection.

(6) Extraordinary life-sustaining treatment shall not be withheld or withdrawn pursuant to this section from a patient known to the medical practitioner to be pregnant so long as it is probable that the foetus will develop to the point of live birth with continued application of extraordinary life-sustaining treatment.

Advance directive not to affect palliative care

11. This Act shall not apply to palliative care and does not affect any right, power or duty which a medical practitioner or any other person has in relation to palliative care.

Patient's rights to make informed decisions on his treatment not affected

12. (1) Section 3 or 10 shall not derogate from any duty of a medical practitioner to inform a patient who is conscious and capable of exercising a rational judgment of all the various forms of treatment that may be available in his particular

case so that the patient may make an informed judgment as to whether a particular form of treatment should, or should not, be undertaken.

(2) This Act shall not affect the right of a patient to make decisions in relation to the use of extraordinary life-sustaining treatment, so long as he is able to do so.

Act not to affect other rights

13. (1) This Act shall not affect the right of any person to refuse medical or surgical treatment.

(2) This Act (other than section 20) shall not affect the legal consequences (if any) of--

(a) taking, or refraining from taking, therapeutic or palliative measures (not being extraordinary life-sustaining treatment) in the case of a patient who is suffering from a terminal illness (whether or not he has made a directive); or

(b) taking, or refraining from taking, extraordinary life-sustaining treatment in the case of a patient who has not made a directive or has revoked a directive made by him.

Penalty for obtaining directive by fraud, forging directive or concealing revocation

14. (1) Any person who--

(a) by any deception, fraud, mis-statement, unconscionable conduct or undue influence, procures or obtains, directly or indirectly, the execution by another person of a directive;

(b) falsifies or forges the directive of another person; or

(c) wilfully conceals or withholds personal knowledge of a revocation of a directive, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) Any person who--

(a) is a beneficiary under the will or any policy of insurance of another person;

(b) has an interest under any instrument under which another person is the donor, settlor or grantor;

(c) would be entitled to an interest in the estate of another person on the death intestate of that person; or

(d) would be entitled to an interest in the moneys of another person held in the Central Provident Fund or other provident fund on the death of that person, and who is guilty of an offence under subsection (1) (whether or not he has been convicted of such an offence) shall forfeit any interest under the will, policy, instrument, intestacy or memorandum executed under the Central Provident Fund Act (Cap. 36), as the case may be.

(3) Where a person is charged for an offence under subsection (1), no person shall act on a directive unless it is ascertained that the directive has been validly and voluntarily made in accordance with the provisions of this Act.

(4) Where a person is convicted of an offence under subsection (1), the directive shall be deemed to be revoked and shall have no effect.

Offence to enquire whether directive made

15. (1) Except in the circumstances specified in subsection (2), no person who has or who will be likely to have the medical care of any patient (whether or not he has made or intends to make a directive) shall ask or otherwise enquire of the patient as to whether or not the patient has made or intends to make a directive.

(2) Nothing in subsection (1) shall affect the duty or right of a medical practitioner responsible for the care of a patient to discuss and explore with his patient the concept of directives and the objects and provisions of this Act and any regulations made thereunder where such discussions are--

(a) consistent with good medical practice;

(b) held in the context of the relationship between a medical practitioner and his patient; and

(c) in furtherance of the purposes of public education.

(3) Except where a patient has been determined in accordance with section 9 to be suffering from a terminal illness, all information relating to the patient's making of a directive, or of the patient's intention to make a directive communicated by the patient to the medical practitioner or other medical worker having the care of the patient shall be kept confidential by the medical practitioner or other medical worker.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Offence to require directive as condition for insurance or medical care

16. (1) Any person who requires or prohibits the making of a directive as a condition for being insured for, or receiving medical or health care services shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(2) Any condition of a policy of insurance referred to in subsection (1) shall be void to the extent that it requires or prohibits the making of a directive.

Act permits only natural death and not euthanasia or abetment of suicide

17. (1) Nothing in this Act shall authorise an act that causes or accelerates death as distinct from an act that permits the dying process to take its natural course.

(2) For the avoidance of doubt, it is hereby declared that nothing in this Act shall condone, authorise or approve abetment of suicide, mercy killing or euthanasia.

Act not to affect insurance policies

18. (1) The making of a directive shall not affect the sale, procurement or issuance of a policy of insurance or any of the terms thereof.

(2) Except in the circumstances as provided in section 14 (2), a policy of insurance shall not be avoided, invalidated or otherwise affected by the withholding or withdrawal of extraordinary life-sustaining treatment from an insured person in accordance with this Act.

Protection of medical practitioners and other persons acting in good faith and without negligence

19. (1) A medical practitioner shall not be subject to civil or criminal liability or discipline for professional misconduct for a decision made by him in good faith and without negligence as to whether--

- (a) a patient is, or is not, suffering from a terminal illness;
- (b) a patient has revoked, or intended to revoke, a directive;
- (c) a patient was, or was not, at the time of making a directive, capable of understanding the nature and consequences of the directive; or
- (d) a directive was valid.

(2) A person acting under the instructions of a medical practitioner shall not be subject to civil or criminal liability or discipline for professional misconduct for

giving effect to a directive in the absence of knowledge of revocation or intended revocation of the directive.

Certain aspects of causation of death

20. (1) For the purposes of the laws of Singapore, the non-application of extraordinary life-sustaining treatment to, or the withdrawal of extraordinary life-sustaining treatment from, a person suffering from a terminal illness shall not constitute a cause of death where the non-application or withdrawal was as a result of and in compliance with a directive validly made in accordance with this Act by the person.

(2) This section shall not relieve a medical practitioner from the consequences of a negligent decision as to whether or not a patient is suffering from a terminal illness.

Composition of offences

21. (1) The Director or any person authorised by him may, in his discretion, compound any offence under this Act or any regulations made thereunder which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of such offence.

(3) The Minister may make regulations to prescribe the offences which may be compounded.

Regulations

22. The Minister may make regulations to prescribe anything which is required to be prescribed by this Act and generally to give effect to the provisions of this Act.

ภาคผนวก จ

The Mental Capacity Act 2005

(Chapter 9)

The Mental Capacity Act 2005

(Chapter 9)

5 Acts in connection with care or treatment

(1) If a person (“D”) does an act in connection with the care or treatment of another person (“P”), the act is one to which this section applies if--

(a) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and

(b) when doing the act, D reasonably believes--

(i) that P lacks capacity in relation to the matter, and

(ii) that it will be in P’s best interests for the act to be done.

(2) D does not incur any liability in relation to the act that he would not have incurred if P--

(a) had had capacity to consent in relation to the matter, and

(b) had consented to D’s doing the act.

(3) Nothing in this section excludes a person’s civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing the act.

(4) Nothing in this section affects the operation of sections 24 to 26 (advance decisions to refuse treatment).

6 Section 5 acts: limitations

(1) If D does an act that is intended to restrain P, it is not an act to which section 5 applies unless two further conditions are satisfied.

(2) The first condition is that D reasonably believes that it is necessary to do the act in order to prevent harm to P.

(3) The second is that the act is a proportionate response to--

(a) the likelihood of P’s suffering harm, and

(b) the seriousness of that harm.

(4) For the purposes of this section D restrains P if he--

- (a) uses, or threatens to use, force to secure the doing of an act which P resists, or
- (b) restricts P's liberty of movement, whether or not P resists.

(5) But D does more than merely restrain P if he deprives P of his liberty within the meaning of Article 5(1) of the Human Rights Convention (whether or not D is a public authority).

24 Advance decisions to refuse treatment: general

(1) "Advance decision" means a decision made by a person ("P"), after he has reached 18 and when he has capacity to do so, that if—

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(a) at a later time and in such circumstances as he may specify, a specified treatment is proposed to be carried out or continued by a person providing health care for him, and

(b) at that time he lacks capacity to consent to the carrying out or continuation of the treatment, the specified treatment is not to be carried out or continued.

(2) For the purposes of subsection (1) (a), a decision may be regarded as specifying a treatment or circumstances even though expressed in layman's terms.

(3) P may withdraw or alter an advance decision at any time when he has capacity to do so.

(4) A withdrawal (including a partial withdrawal) need not be in writing.

(5) An alteration of an advance decision need not be in writing (unless section 25 (5) applies in relation to the decision resulting from the alteration).

25 Validity and applicability of advance decisions

(1) An advance decision does not affect the liability which a person may incur for carrying out or continuing a treatment in relation to P unless the decision is at the material time--

- (a) valid, and
 - (b) applicable to the treatment.
- (2) An advance decision is not valid if P--
- (a) has withdrawn the decision at a time when he had capacity to do so,
 - (b) has, under a lasting power of attorney created after the advance decision was made, conferred authority on the donee (or, if more than one, any of them) to give or refuse consent to the treatment to which the advance decision relates, or
 - (c) has done anything else clearly inconsistent with the advance decision remaining his fixed decision.
- (3) An advance decision is not applicable to the treatment in question if at the material time P has capacity to give or refuse consent to it.
- (4) An advance decision is not applicable to the treatment in question if--
- (a) that treatment is not the treatment specified in the advance decision,
 - (b) any circumstances specified in the advance decision are absent, or
 - (c) there are reasonable grounds for believing that circumstances exist which P did not anticipate at the time of the advance decision and which would have affected his decision had he anticipated them.
- (5) An advance decision is not applicable to life-sustaining treatment unless--
- (a) the decision is verified by a statement by P to the effect that it is to apply to that treatment even if life is at risk, and
 - (b) the decision and statement comply with subsection (6).
- (6) A decision or statement complies with this subsection only if--
- (a) it is in writing,
 - (b) it is signed by P or by another person in P's presence and by P's direction,
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- (c) the signature is made or acknowledged by P in the presence of a witness, and
 - (d) the witness signs it, or acknowledges his signature, in P's presence.

(7) The existence of any lasting power of attorney other than one of a description mentioned in subsection (2)(b) does not prevent the advance decision from being regarded as valid and applicable.

44 Ill-treatment or neglect

(1) Subsection (2) applies if a person (“D”)--

(a) has the care of a person (“P”) who lacks, or whom D reasonably believes to lack, capacity,

(b) is the donee of a lasting power of attorney, or an enduring power of attorney (within the meaning of Schedule 4), created by P, or

(c) is a deputy appointed by the court for P.

(2) D is guilty of an offence if he ill-treats or wilfully neglects P.

(3) A person guilty of an offence under this section is liable--

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

บรรณานุกรม

เอกสารภาษาไทย

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