

MAINE STATE LEGISLATURE

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CORRECTED BILL
(S. P. 75, L. D. 184)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 184

S. P. 75

In Senate, January 27, 1977

Referred to the Committee on Judiciary. Sent down for concurrence and 2,000 copies ordered printed.

MAY M. ROSS, Secretary

Presented by Senator Collins of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Permitting Terminally Ill Patients to Die a Natural Death.

Be it enacted by the People of the State of Maine, as follows:

22 MRSA c. 708 is enacted to read:

CHAPTER 708

THE NATURAL DEATH ACT

§ 2851. Short title

This chapter shall be known and may be cited as "The Natural Death Act."

§ 2852. Definitions

As used in this chapter, the following terms shall have the following meanings, unless the context expressly indicates otherwise.

1. **Attending physician.** "Attending physician" means the physician having the primary responsibility for the treatment and care of the patient whether such physician has been selected by or assigned to the patient.

2. **Health facility.** "Health facility" means a hospital, skilled nursing facility or intermediate care facility licensed as such by the State.

3. **Life-sustaining procedure.** "Life-sustaining procedure" means any medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore or supplant a vital function. Life-sustaining pro-

cedure shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

4. Natural death directive. "Natural death directive" means a written document voluntarily executed by the declarant in accordance with the requirements of section 2853. The directive, or a copy of the directive, shall be made part of the patient's medical records at the time of admission to a health facility if such directive, or a certified copy thereof, is presented to the facility or to the patient's physician by the patient or by an authorized representative.

5. Physician. "Physician" means a physician licensed by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration.

6. Terminal condition. "Terminal condition" means an incurable condition caused by injury, disease or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient.

7. Terminally ill patient. "Terminally ill patient" means a person diagnosed and certified in writing to be afflicted with a terminal condition by 2 physicians who have examined the person. One of the 2 certifying physicians shall be the attending physician.

§ 2853. Execution of natural death directive

1. Execution. Any person 18 years old or older may execute a natural death directive directing the withholding or withdrawal of life-sustaining procedures if he should become a terminally ill patient.

2. Witnesses. The natural death directive shall be signed by the declarant in the presence of at least one witness. A witness shall not be:

- A. Related to the declarant by blood or marriage;
- B. Entitled to any portion of the estate of the declarant upon his decease under any will of the declarant or codicil then existing or, at the time the natural death directive is executed, by operation of law then existing;
- C. A person who has a claim against any portion of the estate of the declarant upon his decease at the time the natural death directive is executed; or
- D. The attending physician or an employee either of the attending physician or of a health facility in which the declarant is a patient.

3. Signature. A natural death directive is "signed" when there is affixed any symbol executed or adopted by the declarant with a present intention to authenticate the writing.

4. Form. The natural death directive shall be in the following form:

Directive made this day of
(Month and Year)

I,, being of sound mind, willfully and voluntarily, make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

(Alternative one, to be used if the natural death directive is executed by a person prior to notification that he is a terminally ill patient)

1. If at any time I should have an incurable injury, disease or illness certified to be a terminal condition by 2 physicians, one of whom is my attending physician at that time and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

(Alternative 2, to be used if the natural death directive is executed by a person after notification that he is a terminally ill patient)

2. I have been diagnosed and notified by, a physician, whose address is, that I have an incurable injury, disease or illness certified to be a terminal condition by 2 physicians, one of whom was my attending physician at the time of certification, and that application of life-sustaining procedures will serve only to artificially prolong the moment of my death. I direct that such procedures be withheld or withdrawn and that I be permitted to die naturally.

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

4. If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

5. This directive shall have no force or effect 5 years from the date filled in above.

I understand the full import of this directive.

Signed

City, County and State of Residence

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

Witness

Acknowledged as a free act on the above date by the above named

Before me,

Notary Public
Justice of the Peace
Attorney at Law

§ 2854. Revocation of natural death directive

1. **Revocation.** A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

A. By being canceled, defaced, obliterated or burned, torn or otherwise destroyed by the declarant or by some person in his presence and at his direction;

B. By a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant, if the declarant is an admitted patient at a health facility. The attending physician shall record in the patient's medical record the time and date when he received notification of the written revocation and a copy of the revocation shall be made a part of the patient's medical records; or

C. When an admitted patient at a health facility, by a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time, date and place of the revocation.

2. **Liability for failure to act on a revocation.** 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.

§ 2855. Effect of natural death directive

An attending physician may in his sole discretion withhold or withdraw life-sustaining procedures from a terminally ill patient who has executed a natural death directive or may transfer the patient, with the consent of the patient or his authorized representative, to another physician who will effectuate the directive.

§ 2856. Patients in nursing homes

A directive shall have no force or effect if the declarant is a patient in a nursing home at the time the directive is executed, unless the witness to the directive is an employee of the Bureau of Maine's Elderly or a patient advocate designated for this purpose by the Bureau of Maine's Elderly, who shall indicate his capacity on the directive. The patient advocate shall have the same qualifications as a witness under section 2853.

§ 2857. Exclusion from civil and criminal liability

No person or health facility acting in accordance with the requirements of this chapter, causing the withholding or withdrawal of life-sustaining procedures from a patient, shall be subject to civil liability therefrom. No person, acting under the direction of a physician, who participates in the with-

holding or withdrawal of life-sustaining procedures in accordance with this chapter shall be subject to any civil liability. No person who participates in the withholding or withdrawal of life-sustaining procedures in accordance with this chapter shall be guilty of any criminal act or of unprofessional conduct.

§ 2858. Withdrawal does not constitute suicide

1. Withholding or withdrawal of life-sustaining procedures. The withholding or withdrawal of life-sustaining procedures from a terminally ill patient in accordance with this chapter shall not, for any purpose, constitute a suicide.

§ 2859. Life insurance policies

The making of a directive pursuant to section 2853 shall not restrict, inhibit or impair 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 life-sustaining procedures from an insured person, notwithstanding any term of the policy to the contrary, when such policy has been issued or renewed subsequent to the effective date of this Act.

§ 2860. No person shall be required to execute a directive

No physician, health facility or insurer, self-insured employee welfare benefit plan, or nonprofit hospital or medical service organization shall require any person to execute a directive as a condition for being insured for, or receiving, health care services.

§ 2861. Limited effect of this chapter

Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner.

§ 2862. Criminal liability

Any person who willfully conceals, cancels, defaces, obliterates or damages the directive of another without such declarant's consent shall be guilty of a Class E crime.

§ 2863. Mercy killings not authorized

Nothing in this chapter 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 chapter.

STATEMENT OF FACT

The intent of this bill is to recognize that adult persons have a fundamental right to determine the extent to which they will receive medical care.

At the same time, physicians, health care personnel and health facilities should be protected in honoring such requests of the patient as are made within certain safeguards, when they in their discretion honor the requests of the patient.