

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1287, L.D. 1857, Bill, "An Act Concerning Authorization to Consent to Powers of Attorney"

Amend the bill in section 1 in that part designated "§5-209" by striking out all of subsection (c) (page 1, lines 40 to 52 and page 2, lines 1 and 2 in L.D.) and inserting in its place the following:

'(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to ~~authorize~~ give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment, or advise service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment when the ward is in a terminal condition or persistent vegetative state as defined in section 5-701 with respect to qualified patients provided, however, that the guardian shall honor any effective living will declaration executed by the ward pursuant to section 5-702. A guardian is not liable by reason of ~~this~~ such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have ~~consented~~ so given or withheld consent. A guardian may consent to the marriage or adoption of ~~his~~ the ward.'

Further amend the bill in section 1 by striking out all of the "MAINE COMMENT*" (page 2, lines 10 to 20 in L.D.) and inserting in its place the following:

MAINE COMMENT - 1992*

Subsection (c) has been revised to make it clear that a guardian is authorized either to give or to withhold consent in

2 connection with health care decisions, and that this authority
extends to decisions about life-sustaining treatment when the
4 ward is in a terminal condition or persistent vegetative state as
defined in section 5-701. The authority and power of a guardian
6 appointed under this section to give or withhold consents or
approvals to withhold or withdraw life-sustaining treatment are
consistent with the standards applicable under section 5-707.
8 Reference to an effective living will declaration executed
pursuant to section 5-702 is intended to include effective living
10 will declarations executed under prior law.'

12 Further amend the bill in section 2 by striking out all of
paragraph (3) (page 2, lines 25 to 33 in L.D.) and inserting in
14 its place the following:

16 '(3) A guardian may give any or withhold consents or
approvals ~~that may be necessary to enable the ward to~~
18 ~~receive~~ related to medical or other professional care,
counsel, treatment or service for the ward. The guardian is
20 empowered to withhold or withdraw life-sustaining treatment
when the ward is in a terminal condition or persistent
22 vegetative state as defined in section 5-701 with respect to
qualified patients provided, however, that the guardian
24 shall honor any effective living will declaration executed
by the ward pursuant to section 5-702.'

26 Further amend the bill in section 2 by striking out all of
28 the "MAINE COMMENT*" (page 2, lines 35 to 48 in L.D.) and
inserting in its place the following:

30 **MAINE COMMENT - 1992***

32 Subsection (a), paragraph (3) has been revised to make it
34 clear that a guardian is authorized either to give or to withhold
consent in connection with health care decisions, and that this
36 authority extends to decisions about life-sustaining treatment
when the ward is in a terminal condition or a persistent
38 vegetative state as defined in section 5-701. Reference to an
effective living will declaration executed pursuant to section
40 5-702 is intended to include effective living will declarations
executed under prior law.'

42 Further amend the bill in section 3 in PART 5 (page 8, line
44 4 in L.D.) by striking out all of the 3rd line and inserting in
its place the following:

46 **MAINE COMMENT - 1992***

COMMITTEE AMENDMENT "A" to H.P. 1287, L.D. 1857

2 Further amend the bill in section 3 in PART 5 in that part
designated '§5-506' by striking out all of subsection (a) (page
4 10, lines 27 to 38 in L.D.) and inserting in its place the
following:

6 '(a) A durable health care power of attorney is a durable
power of attorney by which a principal designates another as
8 attorney-in-fact to make decisions on the principal's behalf in
matters concerning the principal's medical or health treatment
10 and care. An attorney-in-fact designated under a durable health
care power of attorney may be authorized to give or withhold
12 consents or approvals relating to any medical, health or other
professional care, counsel, treatment or service of or to the
14 principal by a licensed or professional certified person or
institution engaged in the practice of, or providing, a healing
16 art, including life-sustaining treatment when the principal is in
a terminal condition or a persistent vegetative state as those
18 terms are defined in section 5-701.'

20 Further amend the bill in section 3 in PART 5 by striking
out all of the "MAINE COMMENT*" (page 11, lines 1 to 10 in
22 L.D.) and inserting in its place the following:

24 'MAINE COMMENT - 1992*

26 This section has been added to the Uniform Act to deal
explicitly with durable health care powers of attorney; to
28 incorporate and clarify prior Maine law on health care powers of
attorney; and to coordinate these provisions with those set forth
30 in Part 7 dealing with Living Wills. It specifically provides
for durable health care powers of attorney that are in effect
32 prior to the disability or incapacity of the principal, as well
as durable health care powers of attorney that become effective
34 upon the disability or incapacity of the principal. This section
deletes the requirement under prior law that a durable health
36 care power of attorney must be notarized and substitutes a
requirement of 2 witnesses, to conform with Part 7. "Persistent
38 vegetative state" is included as a condition for which the
durable health care power of attorney may give the
40 attorney-in-fact the authority to give or withhold consents or
approvals to treatment. This is consistent with the living wills
42 provisions and other references to consents when a principal is
in a terminal condition.'

44
46 Further amend the bill by inserting at the end before the
statement of fact the following:

48 'Sec. 4. 18-A MRSA §5-701, sub-§(b), ¶(10), as enacted by PL
1991, c. 441, §1, is amended to read:

COMMITTEE AMENDMENT

2 (10) "Persistent vegetative state" means a state that
4 occurs after coma in which the individual totally lacks
6 higher cortical and cognitive function, but maintains
8 vegetative ~~brainstem~~ brain stem processes, with no realistic
10 possibility of recovery, as diagnosed in accordance with
12 accepted medical standards. ~~Vegetative-brainstem-processes
may--include--one--or--more--of--the--following+---eyes--of
sleeping--and--waking,--spontaneous--eye--opening--and--movements,
some---motor---activity,---vocalization,---blood---pressure,
respiration--and--heart--beat.~~

14 MAINE COMMENT - 1992*

16 The definition of persistent vegetative state is amended to
18 delete the illustrative language adopted in 1991. The change
20 makes this definition consistent with other medical definitions
22 in the Maine statutes which rely on diagnosis "in accordance with
24 accepted medical standards." The concern is that the
illustrative language would restrict or narrow the situations in
which a physician could diagnosis a patient as being in a
persistent vegetative state. The illustrative language is
retained in the sample forms in section 5-702, subsections (b)
and (c).

26 Sec. 5. 18-A MRSA §5-702, sub-§(d), as enacted by PL 1989, c.
28 830, §1, is repealed.

30 MAINE COMMENT - 1992*

32 In 1990, the Maine Legislature enacted this paragraph which
34 equated the designation of a judicially appointed guardian or an
attorney-in-fact appointed under a medical power of attorney with
the execution of an effective living will declaration for the
36 purposes of determining who may consent or withhold consent for
life-sustaining treatment. The attending physician looks to the
38 declaration first, before any other person may be consulted.
Section 5-707, subsection (b) provides a priority listing of who
40 may consent if there is no effective declaration. These changes
are intended to simplify the interpretation of the law, without
42 changing the original intent. The attorney-in-fact appointed
under a health care power of attorney, then the judicially
44 appointed guardian are inserted at the top of the priority list,
and this section equating those appointments with a living will
46 declaration is repealed.

48 Sec. 6. 18-A MRSA §5-703, as enacted by PL 1989, c. 830, §1,
is amended to read:

2 **§5-703. When declaration operative**

4 A declaration becomes operative when it is communicated to
6 the attending physician and the declarant is determined by the
8 attending physician to be in a terminal condition or persistent
10 vegetative state as defined in section 5-701 and no longer able
12 to make or communicate decisions regarding administration of
14 life-sustaining treatment. When the declaration becomes
16 operative, the attending physician and other health-care
18 providers shall act in accordance with its provisions and with
20 the instructions of a designee under section 5-702, subsection
22 (a) or comply with the transfer requirements of section 5-708.

14 **MAINE COMMENT - 1992***

16 This section is amended to make it consistent with the 1991
18 changes that include persistent vegetative state in the living
20 wills declaration provisions.

22 **Sec. 7. 18-A MRSA §5-705**, as enacted by PL 1989, c. 830, §1,
is amended to read:

24 **§5-705. Recording determination of terminal condition or**
26 **persistent vegetative state and declaration**

28 Upon determining that a declarant is in a terminal condition
30 or persistent vegetative state as defined in section 5-701, the
attending physician who knows of a declaration shall record the
32 determination and the terms of the declaration in the declarant's
medical record.

34 **MAINE COMMENT - 1992***

36 This section is amended to make it consistent with the 1991
38 changes that include persistent vegetative state in the living
wills declaration provisions.

40 **Sec. 8. 18-A MRSA §5-707, sub-§(b), ¶(1)**, as enacted by PL 1989,
c. 830, §1, is repealed.

42 **Sec. 9. 18-A MRSA §5-707, sub-§(b), ¶¶1-A, 1-B and 1-C** are
44 enacted to read:

46 (1-A) An attorney-in-fact appointed by the individual under
a durable health care power of attorney unless the health
care power of attorney expressly provides that treatment be

2 continued or that the attorney-in-fact does not have this
3 authority;

4 (1-B) A judicially appointed guardian of the individual's
5 person;

6 (1-C) The spouse of the individual;
7

8
9 **MAINE COMMENT - 1992***

10
11 The changes to this paragraph are consistent with the repeal
12 of section 5-702, subsection (d). The original intent of this
13 section was to provide a listing of people, in a specific order,
14 who can consent or withhold consent for life-sustaining treatment
15 when a patient is in a terminal condition and the patient has no
16 effective living will declaration. The 1991 changes expand the
17 situation to patients in persistent vegetative states as well.
18 This section provides a priority listing of who can consent if
19 there is no effective declaration. These changes are intended to
20 simplify the interpretation of the law, without changing the
21 original intent. The attorney-in-fact appointed under a health
22 care power of attorney, then the judicially appointed guardian
23 are inserted at the top of the priority list because section
24 5-702, subsection (d) is deleted. There will no longer be
25 confusion about the attorney-in-fact or the judicially appointed
26 guardian being the first to be consulted, in that order, by a
27 physician for consent to life-sustaining treatment for an
28 incompetent patient in a terminal condition or a persistent
29 vegetative state.

30
31 **Sec. 10. 18-A MRSA §5-711, sub-§(d),** as enacted by PL 1989, c.
32 830, §1, is amended to read:

33
34 (d) This Part creates no presumption concerning the
35 intention of an individual who has revoked or has not executed a
36 declaration with respect to the use, withholding, or withdrawal
37 of life-sustaining treatment in the event of a terminal
38 condition, or a persistent vegetative state.

39
40 **MAINE COMMENT - 1992***

41
42 This section is amended to be consistent with the
43 legislative intent in adding persistent vegetative state to
44 terminal condition as a situation in which a living will is
45 operative.'

46

2
4
6
8
10
12
14
16
18

STATEMENT OF FACT

This amendment carries out the intent of the bill, which is to clarify and make more specific the powers of guardians with regard to medical and other services for the ward, and to revise the Probate Code provisions concerning powers of attorney. This latest revision of the Uniform Probate Code includes a separate section on health care powers of attorney. In addition, this amendment revises the Uniform Rights of the Terminally Ill Act to fully carry out the Maine amendments made in 1991 regarding persistent vegetative state. Amendments regarding persistent vegetative state are added to the guardianship and powers-of-attorney provision to be consistent with the 1991 living will amendments.

The Uniform Comments and the Maine Comments are included in both the original bill and this amendment.

Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the House
2/21/92 (Filing No: H-964)