

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 1314

H.P. 983

House of Representatives, April 22, 1993

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**An Act Related to Medical Treatment Decisions for Psychotic Disorders.**

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Received by the Clerk of the House on April 20, 1993. Referred to the Committee on Human Resources and 1200 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FITZPATRICK of Durham.  
Cosponsored by Representatives: DORE of Auburn, JOHNSON of South Portland.

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

4 Sec. 1. 34-B c. 11 is enacted to read:

6 CHAPTER 11

8 MEDICAL TREATMENT OF PSYCHOTIC DISORDERS

10 §11001. Medical treatment of psychotic disorders

12 1. Definitions. As used in this chapter, unless the  
context otherwise indicates, the following terms have the  
following meanings.

14 A. "Attending physician" means the physician who has  
primary responsibility for the treatment and care of the  
patient.

18 B. "Declarant" means a person suffering from a psychotic  
condition who has executed a declaration while in a state of  
remission in accordance with the requirements of subsection  
2.

24 C. "Declaration" means a written document voluntarily  
executed by the declarant in accordance with the  
requirements of subsection 2 regardless of form.

28 D. "Health care facility" includes any program,  
institution, place, building or agency or portion thereof,  
private or public, whether organized for profit or not,  
used, operated or designed to provide medical diagnosis,  
treatment or rehabilitative or preventive care to any  
person. "Health care facility" includes, but is not limited  
to, facilities that are commonly referred to as hospitals,  
outpatient clinics, organized ambulatory health care  
facilities, emergency care facilities and centers, health  
maintenance organizations and other facilities providing  
similarly organized services regardless of nomenclature.

40 E. "Health care provider" means a person who is licensed,  
certified or otherwise authorized or permitted by law to  
administer health care in the ordinary course of business or  
practice of a profession.

44 F. "Incompetent person" means a person who suffers from a  
psychotic condition who is temporarily impaired by reason of  
having lapsed into that psychotic condition to the extent  
that while temporarily impaired, the person lacks sufficient  
understanding or capacity to make or communicate responsible  
decisions concerning the person's health care.

2 G. "Physician" means an individual licensed to practice  
3 medicine.

4  
5 H. "Psychotic condition" means any disease, illness or  
6 condition commonly referred to by the medical profession  
7 according to ordinary standards of current medical practice as  
8 any disorder characterized by psychotic tendencies or  
9 manic-depressive behavior or schizophrenia or other similar  
10 condition that, without the administration of appropriate medical  
11 treatment, including the use of psychotropic drugs, would  
12 constitute a danger to the patient or to others and would result  
13 in a patient being gravely disabled.

14  
15 2. Execution of declaration. Any person 18 years of age or  
16 older who suffers from a psychotic condition but is competent and  
17 in a state of remission at the time of execution may execute a  
18 declaration directing that medical treatment, including the  
19 administration of psychotropic drugs, be provided at a time when  
20 the person has lapsed and is not able to make decisions regarding  
21 medical treatment.

22  
23 3. Declaration requirements. A declaration made pursuant  
24 to this chapter must:

25 A. Be in writing;

26  
27 B. Be signed by the person making the declaration or by  
28 another person in the declarant's presence and at the  
29 declarant's expressed direction;

30  
31 C. Be dated;

32  
33 D. Be signed in the presence of 2 or more witnesses who  
34 are:

35 (1) At least 18 years of age;

36  
37 (2) Not related to the declarant by blood, marriage or  
38 adoption;

39  
40 (3) Not, at the time the declaration is executed,  
41 attending physicians, employees of the attending  
42 physicians or employees of a health care facility in  
43 which the declarant is a patient; and

44  
45 E. Have all signatures notarized at the same time.

46  
47 4. Declaration sample form. The following declaration  
48 sample form may be copied and used by filling in the blanks or  
49

2 may be changed to add more individualized instructions or an  
3 entirely different format may be used to provide health care  
4 instructions.

6 DECLARATION

8 I. Statement of Declarant

10 Declaration made this ..... day of ..... (month,  
11 year). I, ....., being of sound mind,  
12 willfully and voluntarily make known my desire that medical  
13 treatment as outlined below, including the administration of  
14 psychotropic drugs if necessary, be provided to me under the  
15 circumstances set forth below, and do hereby declare:

16 If at any time I should lapse into a psychotic condition as  
17 determined by 2 physicians who have personally examined me, one  
18 of whom is my attending physician and the physicians have  
19 determined that I am unable to make decisions concerning my  
20 medical treatment, and that without medical treatment my  
21 condition will result in my being gravely disabled and in my  
22 posing a serious danger to myself or to others and when medical  
23 treatment would serve to remedy the condition and prevent  
24 potential or further harm to myself or to others, I direct that  
25 the following personal medical treatment plan, including the  
26 elements checked below, be provided to me and be carried out:

28 (...) Psychotropic drugs (specify) .....  
29 .....

30 (...) Hospitalization if necessary

32 (...) Counseling

34 (...) Therapy involving my family members or friends

36 (...) (Other treatment) .....  
37 .....

40 In the absence of my ability to give directions regarding  
41 the provision of medical treatment, it is my intention that this  
42 declaration be honored by my family and physician(s) as my legal  
43 informed consent to receive medical treatment.

44 My instructions must prevail even if they create a conflict  
45 with the desires of my relatives. This declaration controls in  
46 all circumstances.

2 I understand the full import of this declaration and declare  
3 that I am emotionally and mentally competent at this time to make  
4 this declaration.

5 Signed .....

6 Address .....

8 II. Statement of Witnesses

10 I am at least 18 years of age and am not related to the  
11 declarant by blood, marriage or adoption or the attending  
12 physician, an employee of the attending physician or an employee  
13 of the health care facility in which the declarant is a patient.

14 The declarant is personally known to me and I believe the  
15 declarant to be of sound mind at this time of execution.

18 Witness .....

19 Address .....

20 Witness .....

21 Address .....

22 III. Notarization

24 Subscribed, sworn to and acknowledged before me by  
25 ....., the declarant, and subscribed and  
26 sworn to before me by ..... and  
27 ....., witnesses, this .....  
28 day of ....., 19....

30 (SEAL) Signed .....

32 .....  
(official capacity of officer)

34 5. Presumed validity of declaration. If a patient is  
35 incompetent at the time of the decision to give medical  
36 treatment, a declaration executed in accordance with subsection 2  
37 is presumed valid.

38 For the purpose of this chapter, a physician or health care  
39 facility may presume, in the absence of actual notice to the  
40 contrary, that a person who executed a declaration was of sound  
41 mind when the declaration was executed.

42 Execution of a declaration may not be considered an indication of  
43 a declarant's mental incompetence.



Signed .....

Second Attending Physician

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10. Identification of declarant. All inpatient health care facilities shall develop a system to visibly identify a patient's chart that contains a declaration as set forth in this chapter.

11. Transfer to another physician. An attending physician and any other physician under the attending physician's direction or control who possesses the patient's declaration or knows that the declaration is part of the patient's record in the health care facility in which the declarant is receiving care shall follow as closely as possible the terms of the declaration.

An attending physician who, because of personal beliefs or conscience, refuses or is unable to certify a patient or who is unable to comply with the terms of the patient's declaration shall make the necessary arrangements to transfer the patient and the appropriate medical records without delay to another physician. A physician who transfers the patient without unreasonable delay or who makes a good faith attempt to do so is not subject to criminal prosecution or civil liability and may not be found to have committed an act of unprofessional conduct for refusal to comply with the terms of the declaration. Transfer under these circumstances does not constitute abandonment.

Failure of an attending physician to transfer in accordance with this section constitutes professional misconduct.

12. Revocation. At any time the declarant is in a state of remission and is competent, the declaration may be revoked by:

A. Canceling, defacing, obliterating, burning, tearing or otherwise destroying by the declarant or by some person in the declarant's presence and at the declarant's direction;

B. A written revocation signed and dated by the declarant expressing the declarant's intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation;

C. A declarant's unambiguous verbal expression in the presence of 2 adult witnesses of an intent to revoke the declaration. The revocation becomes effective upon communication to the attending physician by the declarant or by both witnesses. The attending physician shall record in



2 the patient's medical record the time, date and place of the  
3 revocation and the time, date and place, if different, at  
4 which the attending physician received notification of the  
5 revocation; or

6 D. A declarant's unambiguous verbal expression of an intent  
7 to revoke the declaration to an attending physician.

8  
9  
10 13. Health care or health insurance. A person or entity  
11 may not require any person to execute a declaration as a  
12 condition for being insured for or for receiving insurance  
13 benefits or health care services.

14 14. Criminal penalties. A person who threatens, directly  
15 or indirectly, coerces or intimidates any person to execute a  
16 declaration commits a Class C crime.

17 A person who willfully conceals, cancels, defaces, obliterates or  
18 damages another's declaration without the declarant's consent or  
19 who falsifies or forges a declarant's revocation of declaration  
20 with the intent to create the false impression that the declarant  
21 has directed that no medical treatment be given commits a Class E  
22 crime.

23 A physician who willfully fails to record a statement of  
24 revocation according to the requirements of subsection 12 commits  
25 a Class C crime.

26  
27  
28 15. Health personnel protections. In the absence of actual  
29 notice of the revocation of a declaration, a health care  
30 provider, health care facility, physician or other person acting  
31 under the direction of an attending physician is not subject to  
32 criminal prosecution or civil liability and may not be deemed to  
33 have engaged in unprofessional conduct as a result of the  
34 provision of medical treatment to a declarant in accordance with  
35 this chapter unless the absence of actual notice resulted from  
36 the negligence of the health care provider, physician or other  
37 person.

38  
39  
40 16. Petition for guardianship. A person may petition the  
41 court for appointment of a guardian for a declarant if that  
42 person has good reason to believe that the provision of medical  
43 treatment in a particular case:

44  
45 A. Is contrary to the most recent expressed wishes of a  
46 declarant who was in remission and was competent at the time  
47 of expressing the wishes;

48  
49 B. Is being proposed pursuant to a declaration that has  
50 been falsified, forged or coerced; or

2           C. Is being considered without the benefit of a revocation  
4           that has been unlawfully concealed, destroyed, altered or  
              cancelled.

6           17. Procedure in absence of declaration. In the absence of  
8           a declaration, ordinary standards of current medical practice  
10           must be followed. Nothing in this chapter may be construed to  
12           require a declaration in order for medical treatment to be  
14           given. If there is no declaration, a verbal statement made by  
16           the patient to either a physician or to the patient's friend or  
              relative may be considered by the physician in deciding whether  
              the patient would want the physician to provide medical  
              treatment. Unambiguous verbal statements by the patient or  
              reliable reports of these statements must be documented in the  
              patient's medical record.

18           The provision of medical treatment pursuant to this subsection is  
20           not grounds for any civil or criminal action and does not  
              constitute professional misconduct.

22           18. Preservation of existing rights. Nothing in this  
24           chapter impairs or supersedes any legal right or legal  
26           responsibility that a person may have to provide medical  
              treatment in a lawful manner. In this respect, the provisions of  
              this chapter are cumulative.

28           19. No presumption. This chapter does not create a  
30           presumption concerning the intention of a person who has revoked  
              or has not executed a declaration to receive medical treatment.

32           20. Declaration executed before effective date. The  
34           declaration of any patient executed prior to the effective date  
              of this chapter must be given effect as provided in this chapter.

36           21. Recognition of document executed in another state. A  
38           document executed in another state is valid for purposes of this  
40           chapter if the document and the execution of the document  
              substantially comply with the requirements of this chapter.

42           22. Effect of multiple documents. Medical treatment  
44           instructions contained in a declaration executed in accordance  
              with this chapter supersede:

46           A. A contrary or conflicting instruction given by a proxy  
48           or an attorney for health care decisions unless the proxy  
              appointment or the power of attorney expressly provides  
              otherwise; and

50           B. Instructions in a prior declaration.

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## STATEMENT OF FACT

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This bill ensures the right of any person 18 years of age or older suffering from a psychotic condition to make a written declaration instructing the person's physician to provide medical treatment, including the administration of psychotropic drugs.

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