

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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ONE HUNDRED AND FOURTEENTH LEGISLATURE

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B. "Interested party" means any party with a claim to the real estate of record in the appropriate Registry of Deeds, as of the date of either:

(1) Recording of the abstract, affidavit or certificate, for foreclosures under section 6201; or

(2) Recording of the notice of foreclosure, for foreclosures under section 6203.

C. "The date of a sale" means the closing date at which a deed is delivered to the bona fide purchaser.

6. Application. This section applies only to mortgages executed on or after the effective date of this section.

See title page for effective date.

CHAPTER 830

H.P. 1497 - L.D. 2074

An Act Concerning Living Wills

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

Sec. 1. 18-A MRSA Art. V, Pt. 7 is enacted to read:

PART 7

LIVING WILLS

§5-701. Short title and definitions

This Part may be cited as the "Uniform Rights of the Terminally Ill Act" and shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Part among states enacting this Act. As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a writing executed in accordance with the requirements of section 5-702, subsection (a).

(3) "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.

(4) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying.

(a) "Life-sustaining treatment" does not include artificially administered nutrition and hydration unless the declarant elects in the declaration to include artificially administered nutrition and hydration in the definition of life-sustaining treatment.

(b) The term "artificially administered nutrition and hydration" means the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

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

(6) "Physician" means an individual licensed as a physician under Title 32, chapter 48 or an osteopathic physician under Title 32, chapter 36.

(7) "Qualified patient" means a patient 18 or more years of age who has executed a declaration and who has been determined by the attending physician to be in a terminal condition.

(8) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(9) "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

§5-702. Declaration relating to use of life-sustaining treatment

(a) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by 2 individuals.

(b) A declaration directing a physician to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time, and I am no longer able to make or communicate decisions regarding my medical treatment, I direct my attending physician, pursu-

ant to the Uniform Rights of the Terminally Ill Act of this State, to withhold or withdraw such treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Optional: I direct my attending physician to withhold or withdraw artificially administered nutrition and hydration which only prolongs the process of dying.
Signature _____
NOTE: This optional provision must be signed to be effective.

Signed this _____ day of _____, _____.

Signature _____

Address _____

The declarant voluntarily signed this writing in my presence.

Witness _____
Address _____

Witness _____
Address _____

NOTE: Maine law provides that artificially administered nutrition and hydration does not constitute a life-sustaining treatment that may be withheld or withdrawn pursuant to a living will declaration unless the declarant elects otherwise in the declaration itself.

(c) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time, and I am no longer able to make or communicate decisions regarding my medical treatment, I appoint _____ or, if he or she is not reasonably available or is unwilling to serve, _____, to make decisions on my behalf regarding withholding or withdrawal of such treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Uniform Rights of the Terminally Ill Act of this State.

Optional: If the individual(s) I have so appointed is not reasonably available or is unwilling to serve, I direct my attending physician, pursuant to the Uniform Rights of the Terminally Ill Act of this State, to withhold or withdraw such treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.
Signature _____
NOTE: This optional provision must be signed to be effective.

Optional: I direct my attending physician to withhold or withdraw artificially administered nutrition and hydration which only prolongs the process of dying.
Signature _____
NOTE: This optional provision must be signed to be effective.

Signed this _____ day of _____, _____.

Signature _____

Address _____

The declarant voluntarily signed this writing in my presence.

Witness _____
Address _____

Witness _____
Address _____

Name and address of designees.

Name _____
Address _____

NOTE: Maine law provides that artificially administered nutrition and hydration does not constitute a life-sustaining treatment that may be withheld or withdrawn pursuant to a living will declaration unless the declarant elects otherwise in the declaration itself.

(d) The designation of a judicially appointed guardian or an attorney-in-fact appointed under a medical power of attorney pursuant to Part 5, constitutes for purposes of this Part a declaration designating another pursuant to subsection (a).

(e) A physician or other health-care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant and any individual designated to act for the declarant. This subsection does not affect the duty of a physician or other health care provider under section 5-708.

§5-703. When declaration operative

A declaration becomes operative when it is communicated to the attending physician and the declarant is determined by the attending physician to be in a terminal condition and no longer able to make or communicate decisions regarding administration of life-sustaining treatment. When the declaration becomes operative, the attending physician and other health-care providers shall act in accordance with its provisions and with the instructions of a designee under section 5-702, subsection (a) or comply with the transfer requirements of section 5-708.

§5-704. Revocation of declaration

(a) A declarant may revoke a declaration at any time and in any manner, without regard to the declarant's mental or physical condition. A revocation is effective upon its communication to the attending physician or other health-care provider by the declarant or a witness to the revocation.

(b) The attending physician or other health-care provider shall make the revocation a part of the declarant's medical record.

§5-705. Recording determination of terminal condition and declaration

Upon determining that a declarant is in 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.

§5-706. Treatment of qualified patients

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

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

§5-707. Consent by others to withdrawal or withholding of treatment

(a) If written consent to the withholding or withdrawal of the treatment, witnessed by 2 individuals, is given to the attending physician, the attending physician may withhold or withdraw life-sustaining treatment from an individual who:

(1) Has been determined by the attending physician to be in a terminal condition and no longer able to make or communicate decisions regarding administration of life-sustaining treatment; and

(2) Has no effective declaration.

(b) The authority to consent or to withhold consent under subsection (a) may be exercised by the following individuals, other than an individual disqualified under subsection (g), in order of priority:

(1) The spouse of the individual;

(2) An adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(3) The parents of the individual;

(4) An adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(5) The nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(c) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide, or declines to decide, the next class is authorized to decide, but an equal division in a class does not authorize the next class to decide.

(d) A decision to grant or withhold consent must be made in the best interest of the individual consistent with the individual's desires, if known, and in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(e) A decision of the attending physician acting in good faith that a consent is valid or invalid is conclusive unless otherwise determined by a court of competent jurisdiction.

(f) Any person with a significant personal relationship with the individual may petition a court of competent jurisdiction to determine whether a decision made by a person authorized to consent or to withhold consent under this section was made in the best interest of the individual consistent with the individual's desires, if known, and in good faith.

(g) An individual may disqualify others from consenting to the withdrawal or withholding of life-sustaining treatment from the individual by any writing, signed by the individual, which designates those disqualified. An attending physician who knows of a written disqualification may not accept a consent from a disqualified individual. A disqualified individual may not consent for another under subsection (a).

§5-708. Transfer of patients

An attending physician or other health-care provider who is unwilling to comply with this Part shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health-care provider who is willing to do so.

§5-709. Immunities

(a) In the absence of knowledge of the revocation of a declaration, a person is not subject to civil or criminal liability, or discipline for unprofessional conduct, for carrying out the declaration or the instructions of a designee under section 5-702, subsection (a) pursuant to the requirements of this Part.

(b) A physician or other health-care provider, whose action under this Part is in accord with reasonable medical standards, is not subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that action.

(c) A physician or other health-care provider, whose decision about the validity of consent under section 5-707 is made in good faith, is not subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that decision.

(d) An individual designated pursuant to section 5-702, subsection (a) or an individual authorized to consent pursuant to section 5-707, whose decision is made or consent is given in good faith pursuant to this Part, is not subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that decision.

§5-710. Penalties

(a) A physician or other health-care provider who willfully fails to transfer the care of a patient in accordance with section 5-708 is guilty of a Class E crime.

(b) A physician who willfully fails to record a determination of terminal condition or the terms of a declaration in accordance with section 5-705 is guilty of a Class E crime.

(c) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another individual without the declarant's consent or who falsifies or forges a revocation of the declaration of another individual is guilty of a Class E crime.

(d) An individual who falsifies or forges the declaration of another individual, or willfully conceals or withholds personal knowledge of a revocation under section 5-704, is guilty of a Class B crime.

(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 E crime.

(f) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a Class E crime.

(g) The penalties provided in this section do not displace any sanction applicable under other law.

§5-711. Miscellaneous provisions

(a) Neither the decision to withhold or withdraw nor the actual withholding or withdrawal of life-sustaining treatment in accordance with this Part which results in the death of an individual shall be deemed to constitute, for any purpose, a suicide or homicide.

(b) The making of a declaration pursuant to section 5-702 does not affect the sale, procurement, or issuance of a policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term to the contrary.

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

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

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

(f) This Part does not require a physician or other health-care provider to take action contrary to reasonable medical standards.

(g) This Part does not condone, authorize, or approve mercy-killing, euthanasia or suicide.

§5-712. When health-care provider may presume validity of declaration

In the absence of knowledge to the contrary, a physician or other health-care provider may assume that a declaration complies with this Part and is valid.

§5-713. Recognition of declaration executed in another state

A declaration executed in another state in compliance with the law of that state or of this State is valid for purposes of this Part.

§5-714. Effect of previous declaration

An instrument executed before the effective date of this Part which substantially complies with section 5-702, subsection (a) is effective under this Part.

Sec. 2. 22 MRSA c. 710-A, as amended, is repealed.

See title page for effective date.

CHAPTER 831

S.P. 699 - L.D. 1837

An Act Related to the State Board of Substance Abuse Counselors

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State is experiencing a shortage of licensed substance abuse counselors; and

Whereas, the current examination practices of the State Board of Substance Abuse Counselors are not clearly defined; and

Whereas, the laws governing the design and delivery of the examinations for licensing substance abuse counselors do not specify measurement and evaluation criteria; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 32 MRSA §6208-A, sub-§1, as amended by PL 1989, c. 503, Pt. B, §149, is further amended to read:

1. Membership. The State Board of Substance Abuse Counselors, as established by Title 5, section 12004-A, subsection 41, shall consist of 9 ~~11~~ members. Nine members shall be appointed by the Governor. One member shall be the Director of the Office of Alcoholism and Drug Abuse Prevention or a designee. One member, appointed by the Chancellor of the University of Maine System, shall be a member of the university faculty involved in the training of substance abuse counselors. Seven ~~Of these 11 members, 5~~ members shall be licensed, ~~certified or registered~~ substance abuse counselors. Two members shall be nonproviders, one of whom shall be a consumer of substance abuse services. One member shall be a public member. One member shall be a represent-

ative of a regional alcohol and drug abuse council. Members must represent a broad geographic distribution of the State.

Sec. 2. 32 MRSA §6210, as repealed and replaced by PL 1983, c. 413, §213, is amended to read:

§6210. Meetings; elections; quorum

The board shall meet at least once a year to conduct its business and elect its officers. Additional meetings shall be held as necessary to conduct the ~~the~~ business of the board, and may be convened at the call of the ~~chairman~~ chair or a majority of the board members. Five members of the board shall constitute a quorum for all purposes.

The board ~~may shall~~ elect a ~~chairman, chair and secretary and treasurer.~~ chairman, chair and secretary. The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions.

Sec. 3. 32 MRSA §6212, sub-§1, as amended by PL 1987, c. 395, Pt. A, §201, is further amended to read:

1. Set standards. In addition to those standards set forth in section 6213, the board in consultation with the Office of Alcoholism and Drug Abuse Prevention may set additional standards of eligibility for persons desiring to become substance abuse counselors. Any standards of eligibility set by the board must be clearly defined, measurable, written, in accordance with accepted standards, and available to the public upon request.

Sec. 4. 32 MRSA §6212, sub-§2, as enacted by PL 1977, c. 466, §2, is amended to read:

2. Adopt criteria. The board, in cooperation with the Office of Alcoholism and Drug Abuse Prevention, may design and adopt an examination or other suitable criteria for establishing a candidate's knowledge, skill and experience in substance abuse counseling. Any criteria adopted by the board for establishing a candidate's knowledge, skill and experience in substance abuse counseling must be clearly defined, have an established baseline scoring procedure that is objectively measured, be in writing and available to the public upon request.

Sec. 5. 32 MRSA §6212, sub-§3, as amended by PL 1987, c. 395, Pt. A, §201, is further amended to read:

3. Registration and standards. The board may register and set standards of practice for licensed, certified and registered substance abuse counselors working in Maine. Any standards set by the board for practice for licensed, certified and registered substance abuse counselors working in Maine must be clearly defined, measurable, written, in accordance with accepted standards, and available to the public upon request. Educational background must be a consideration in any licensing or registration standards adopted by the board.

Sec. 6. 32 MRSA §6212, sub-§4-A is enacted to read: