

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

following information, if available, which the Legislature may use in making a determination on a proposal for secession:

1. Use of alternative dispute resolution. Any report prepared by a neutral 3rd party on the extent to which the secession territory and the affected municipality have attempted to resolve their differences through alternative dispute resolution such as mediation, facilitation or arbitration;

2. Effective date. The date on which a proposed secession is effective;

3. Provision of educational services. Plans for the provision of educational services, including school transportation services for all students in the proposed secession territory;

4. Distribution of tangible assets and liabilities. Plans regarding the distribution of assets and liabilities;

5. Information about municipality. The following information concerning the municipality and the proposed secession territory:

A. Present population, past population change and projected population for the secession territory;

B. Quantity of land within the secession territory proposed for incorporation; the natural terrain of the secession territory, including general topography, major watersheds, soil conditions; and such natural features as rivers and lakes;

C. Present pattern of physical development in the secession territory, including residential, industrial, commercial, agricultural and institutional land uses; and the present transportation network and potential transportation issues, including proposed highway development;

D. Land use controls and planning presently being utilized in the secession territory, including comprehensive plans for development in the secession territory;

E. Present governmental services being provided to the secession territory, including water and sewer service, fire protection, police protection, street improvements and maintenance, administrative services and recreational facilities;

F. Existing or potential problems of environmental pollution and the need for additional services to resolve these problems;

G. Fiscal data of the secession territory, including the net tax capacity of the proposed secession territory and the impact on the municipality from

which the territory proposes to secede; the present bonded indebtedness; and the local tax rates of the county, school district and municipality;

H. Effect of the proposed incorporation on communities adjacent to the secession territory and on school districts within and adjacent to the secession territory; and

I. Ability of municipal government to deliver services to the secession territory; and

6. Community support. The extent to which the proposed secession territory and the affected municipality or municipalities have demonstrated support or opposition for a proposal for secession, including the use of petitions, votes or other methods of indicating support or opposition.

See title page for effective date.

CHAPTER 378

H.P. 182 - L.D. 230

An Act Adopting the Uniform Health-care Decisions Act

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

PART A

Sec. A-1. 18-A MRSA Art. V, Pt. 8 is enacted to read:

PART 8

UNIFORM HEALTH-CARE DECISIONS ACT

§5-801. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Advance health-care directive" means an individual instruction from, or a power of attorney for health care by, an individual with capacity.

(b) "Agent" means an individual with capacity designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

(c) "Capacity" means the ability to have a basic understanding of the diagnosed condition and to understand the significant benefits, risks and alternatives to the proposed health care and the consequences of foregoing the proposed treatment, the ability to

make and communicate a health care decision and the ability to understand the consequences of designating an agent or surrogate to make health-care decisions.

(d) "Guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

(e) "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

(f) "Health-care decision" means a decision made by an individual with capacity or by the individual's agent, guardian or surrogate, regarding the individual's health care, including:

(1) Selection and discharge of health-care providers and institutions;

(2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

(3) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

(g) "Health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(h) "Health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(i) "Individual instruction" means a direction from an individual with capacity concerning a health-care decision for the individual.

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

(k) "Physician" means an individual authorized to practice medicine under Title 32.

(l) "Power of attorney for health care" means the designation of an agent with capacity to make health-care decisions for the individual granting the power.

(m) "Primary physician" means a physician designated by an individual with capacity or by the individual's agent, guardian or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated

physician is not reasonably available, a physician who undertakes the responsibility.

(n) "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

(o) "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.

(p) "Supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

(q) "Surrogate" means an individual with capacity, other than a patient's agent or guardian, authorized under this Part to make a decision to withhold or withdraw life-sustaining treatment for a patient who does not have capacity and who is either in a terminal condition or in a persistent vegetative state.

(r) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

(s) "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

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

§5-802. Advance health-care directives

(a) An adult or emancipated minor with capacity may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises. An oral instruction is valid only if made to a health-care provider or to an individual who may serve as a surrogate under section 5-805, subsection (b).

(b) An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power must be in writing and signed by the principal and 2 witnesses. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term health-care institution at which the principal is receiving care.

(c) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

(d) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advanced health-care directive must be made by the primary physician or by a court of competent jurisdiction.

(e) An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(f) A health-care decision made by an agent for a principal is effective without judicial approval.

(g) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(h) An advance health-care directive is valid for purposes of this Part if it complies with this Part, regardless of when or where executed or communicated, or if valid under the laws of the state in which it was executed.

§5-803. Revocation of advance health-care directive

(a) An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

(b) An individual with capacity may revoke all or part of an advance health-care directive, other than

the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) A health-care provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

§5-804. Optional form

The following form may, but need not, be used to create an advance health-care directive. The other sections of this Part govern the effect of this or any other writing used to create an advance health-care directive. An individual with capacity may complete or modify all or any part of the following form.

ADVANCE HEALTH-CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit

the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;

(b) Select or discharge health-care providers and institutions;

(c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

(d) Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box , my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

(a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box , artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for

alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed)

PART 3

DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) Upon my death (mark applicable box)

(a) I give any needed organs, tissues or parts, OR

(b) I give the following organs, tissues or parts only

(c) My gift is for the following purposes (strike any of the following you do not want)

(i) Transplant

(ii) Therapy

(iii) Research

(iv) Education

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

(11) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

_____	_____
(date)	(sign your name)
_____	_____
(address)	(print your name)
_____	_____
(city) (state)	

(Optional) SIGNATURES OF WITNESSES:

<u>First witness</u>	<u>Second witness</u>
_____	_____
(print name)	(print name)
_____	_____
(address)	(address)
_____	_____
(city) (state)	(city) (state)
_____	_____
(signature of witness)	(signature of witness)
_____	_____
(date)	(date)

§5-805. Decisions by surrogate

(a) A surrogate may make a decision to withhold or withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity, no agent or guardian has been appointed or the agent or guardian is not reasonably available and the patient is in a terminal condition or a persistent vegetative state as determined by the primary physician.

(b) Any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

- (1) The spouse, unless legally separated;
- (2) An adult child;
- (3) A parent;
- (4) An adult brother or sister;
- (5) An adult grandchild;
- (6) An adult niece or nephew, related by blood or adoption;
- (7) An adult aunt or uncle, related by blood or adoption; or
- (8) Another adult relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation.

(c) If none of the individuals eligible to act as surrogate under subsection (b) is reasonably available, an adult who has exhibited special concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate.

(d) A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (b) who can be readily contacted.

(e) If more than one member of a class assumes authority to act as surrogate and they, or members of different classes who are reasonably available, do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider may comply with the decision of the class having priority or a majority of the members of that class who have communicated their views to the provider. The health-care provider may refer the members of the class or classes to a neutral 3rd party for assistance in resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

(f) A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the

extent known to the surrogate. A consent is not valid if it conflicts with the intention of the patient previously expressed to the surrogate.

(g) A health-care decision made by a surrogate for a patient lacking capacity is effective without judicial approval.

(h) An individual with capacity at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health-care provider of the disqualification.

(i) A surrogate may not be an owner, operator or employee of a residential long-term health-care institution at which the patient is receiving care unless the surrogate is one of the following:

- (1) The spouse of the patient;
- (2) An adult child of the patient;
- (3) A parent of the patient; or
- (4) A relative of the patient with whom the patient has resided for more than 6 months prior to the decision.

(j) A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

§5-806. Decisions by guardian

(a) Except as authorized by a court of competent jurisdiction, a guardian shall comply with the ward's individual instructions and other wishes, if any, expressed while the ward had capacity and to the extent known to the guardian, and may not revoke the ward's advance health-care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

(c) A health-care decision made by a guardian for the ward is effective without judicial approval, except under the following circumstances:

- (1) The guardian's decision is contrary to the ward's individual instructions and other wishes, expressed while the ward had capacity; or
- (2) The guardian seeks to withhold or withdraw life-sustaining treatment from the ward, against the advice of the ward's primary physician and in

the absence of instructions from the ward, made while the ward had capacity.

§5-807. Obligations of health-care provider

(a) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

(c) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian, or surrogate or the validity of an advance health-care directive shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(d) Except as provided in subsections (e) and (f), a health-care provider or institution providing care to a patient shall:

(1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(2) Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health-care provider may decline to comply with an individual instruction or health-care decision if the instruction or decision appears not to be in compliance with this Act or for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision appears not to be in compliance with this Act or if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(f) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(g) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(2) Provide continuing care to the patient until a transfer can be effected or a court of competent jurisdiction issues a final order regarding the decision; and

(3) Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision.

(h) A health-care provider or institution may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing health care.

§5-808. Health-care information

Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

§5-809. Immunities

(a) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) Complying with a health-care decision of a person apparently having authority and capacity to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(2) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority or capacity, or that the decision otherwise does not comply with this Act;

(3) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated; or

(4) Seeking judicial relief from a court of competent jurisdiction.

(b) An individual acting as agent, guardian or surrogate under this Part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

§5-810. Statutory damages

(a) A health-care provider or institution that intentionally violates this Part is subject to liability to the aggrieved individual for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(b) A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke or not to give an advance health-care directive, is subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

§5-811. Capacity

(a) This Part does not affect the right of an individual to make health-care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive and to designate or disqualify a surrogate. This presumption may be rebutted by a determination by the individual's primary physician or by a court of competent jurisdiction.

§5-812. Effect of copy

A copy of a written advance health-care directive, revocation of an advance health-care directive or designation or disqualification of a surrogate has the same effect as the original.

§5-813. Effect of Part

(a) This Part does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

(b) Death resulting from the withholding or withdrawal of health care in accordance with this Part

does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(c) This Part does not authorize mercy killing, assisted suicide, euthanasia or the provision, withholding, or withdrawal of health care to the extent prohibited by other statutes of this State.

(d) This Part does not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(e) This Part does not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care institution unless the individual's written advance health-care directive expressly so provides.

(f) This Part does not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a mental health-care institution.

§5-814. Judicial relief

On petition of a patient, the patient's agent, guardian or surrogate, a health-care or social services provider or institution involved with the patient's care, a state agency mandated to provide adult protective services pursuant to Title 22, sections 3472 to 3487, or an adult relative or adult friend of the patient, the court may enjoin or direct a health-care decision or other equitable relief.

§5-815. Uniformity of application and construction

This Part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this Part among states enacting it.

§5-816. Short title

This Part may be cited as the Uniform Health-care Decisions Act.

§5-817. Effective date

This Part takes effect on October 1, 1995.

PART B

Sec. B-1. 18-A MRSA §5-209, sub-§(c), as amended by PL 1991, c. 719, §1, is further amended to read:

(c) The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or 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 as set forth in section 5-312, subsection (a), paragraph (3).~~ A guardian is not liable by reason of 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 so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.

Sec. B-2. 18-A MRSA §5-312, sub-§(a), ¶(3), as amended by PL 1991, c. 719, §2, is further amended to read:

(3) A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or 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. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity.~~

Sec. B-3. 18-A MRSA §5-506, sub-§(a), as enacted by PL 1991, c. 719, §3, is amended to read:

(a) A durable health care power of attorney is a durable power of attorney by which a principal designates another as attorney-in-fact to make decisions on the principal's behalf in matters concerning the principal's medical or health treatment and care. An attorney-in-fact designated under a durable health care power of attorney may be authorized to give or withhold consents or approvals relating to any

medical, health or other professional care, counsel, treatment or service of or to the principal by a licensed or professional certified person or institution engaged in the practice of, or providing, a healing art, including life-sustaining treatment when the principal is in a terminal condition or a persistent vegetative state as those terms are defined in section 5-701.

Sec. B-4. 18-A MRSA Art. V, Pt. 7, as amended, is repealed.

Sec. B-5. 29-A MRSA §1403, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

§1403. Advance health-care directive

Subject to available funding, the Secretary of State shall make ~~living will~~ advance health-care directive forms available in offices of the Bureau of Motor Vehicles. The form must be in substantially the form provided in Title 18-A, section ~~5-702~~ 5-804 and with the addition of a title at the top of the form to read "LIVING WILL" and the following information at the end: "Completion of this form is optional."

See title page for effective date.

CHAPTER 379

S.P. 343 - L.D. 948

An Act to Provide Greater Access to Health Care

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

Sec. 1. 3 MRSA §927, sub-§4, ¶B, as amended by PL 1993, c. 92, §2, is further amended to read:

B. Independent agency:

(6) State Planning Office; and

(8) Joint Practice Council on Advanced Practice Registered Nursing.

Sec. 2. 5 MRSA §12004-I, sub-§72-C is enacted to read:

<u>72-C.</u>	<u>Joint</u>	<u>Discretion</u>	<u>32 MRSA</u>
<u>Occupations:</u>	<u>Practice</u>	<u>of Appoint-</u>	<u>§2265</u>
<u>Advanced</u>	<u>Council</u>	<u>ing Agency</u>	
<u>Practice</u>	<u>on</u>		
<u>Registered</u>	<u>Advanced</u>		
<u>Nursing</u>	<u>Practice</u>		
	<u>Registered</u>		
	<u>Nursing</u>		

Sec. 3. 32 MRSA §2102, sub-§2, ¶B, as amended by PL 1993, c. 600, Pt. A, §110, is repealed.

Sec. 4. 32 MRSA §2102, sub-§2-A is enacted to read:

2-A. Advanced practice registered nursing. "Advanced practice registered nursing" means the delivery of expanded professional health care by an advanced practice registered nurse that is:

A. Consistent with advanced educational qualifications as set forth in section 2201-A, subsection 2;

B. Within the advanced practice registered nurse's scope of practice as specified by the board by rulemaking, taking into consideration any national standards that exist; and

C. In accordance with the standards of practice for advanced practice registered nurses as specified by the board by rulemaking, taking into consideration any national standards that may exist. Advanced practice registered nursing includes consultation with or referral to medical and other health care providers when required by client health care needs.

A certified nurse practitioner or a certified nurse midwife who qualifies as an advanced practice registered nurse may prescribe and dispense drugs or devices, or both, in accordance with rules adopted by the board. In adopting such rules, the board shall invite and consider comment from the Joint Practice Council on Advanced Practice Registered Nursing.

A certified nurse practitioner who qualifies as an advanced practice registered nurse must practice, for at least 24 months, under the supervision of a licensed physician or must be employed by a clinic or hospital that has a medical director who is a licensed physician. The certified nurse practitioner must submit written evidence to the board upon completion of the required clinical experience.

The board shall adopt rules necessary to effectuate the purposes of this chapter relating to advanced practice registered nursing.

Sec. 5. 32 MRSA §2102, sub-§5-A is enacted to read:

5-A. Advanced practice registered nurse. "Advanced practice registered nurse" means an individual who is currently licensed under this chapter and approved by the board to practice advanced practice registered nursing as defined in subsection 2-A. "A.P.R.N." is the abbreviation for the title of "advanced practice registered nurse." An advanced practice registered nurse may use the abbreviation