

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2823

AN ACT

AMENDING SECTIONS 36-3203, 36-3206 AND 36-3231, ARIZONA REVISED STATUTES;
RELATING TO LIVING WILLS AND HEALTH CARE DIRECTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-3203, Arizona Revised Statutes, is amended to
3 read:

4 36-3203. Surrogate; authority; responsibilities; immunity

5 A. A person authorized as a surrogate to make health care decisions
6 under this chapter is not responsible for paying the patient's health care
7 costs unless the person is otherwise required to do so.

8 B. This chapter does not authorize a surrogate to consent to any act
9 or omission to which the patient could not lawfully consent.

10 C. The surrogate shall make health care decisions for the patient in
11 accordance with the patient's wishes as expressed in the health care
12 directive. If the health care directive does not provide sufficient
13 information to know what the patient would want in a particular circumstance,
14 the surrogate shall base these decisions on the surrogate's knowledge of the
15 patient's values if those are known or can be determined to the surrogate's
16 satisfaction. If neither the health care directive nor the surrogate's
17 knowledge of the patient's values provides a sufficient basis for making a
18 health care decision, the surrogate shall decide based on the surrogate's
19 good faith belief as to what is in the patient's best interest.

20 D. A surrogate who makes good faith health care decisions for a
21 patient is not subject to civil or criminal liability for those decisions.
22 Acts and refusals to act made in reliance on the provisions of a health care
23 directive are presumed to be made in good faith. A court shall base a
24 finding of an absence of good faith on information known to the surrogate and
25 shall enter its finding only after it has made a determination of bad faith
26 in written findings of fact based on clear and convincing evidence of
27 improper motive. For the purposes of this subsection, "good faith" includes
28 all health care decisions, acts and refusals to act based on a surrogate's
29 reasonable belief of a patient's desires or a patient's best interest if
30 these decisions, acts or refusals to act are not contrary to the patient's
31 express written directions in a valid health care directive.

32 E. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A SURROGATE WHO IS NOT THE
33 PATIENT'S AGENT OR GUARDIAN SHALL NOT MAKE DECISIONS TO WITHDRAW THE
34 ARTIFICIAL ADMINISTRATION OF FOOD OR FLUID.

35 Sec. 2. Section 36-3206, Arizona Revised Statutes, is amended to read:

36 36-3206. Enforcement or challenge of a directive or decision;
37 judicial proceedings

38 A. An interested person may file a verified petition with the superior
39 court to determine the validity or effect of a health care directive or the
40 decision of a surrogate.

41 B. The petition shall include the following information:

42 1. The name and current location of the patient and any surrogate
43 authorized to make decisions for the patient.

44 2. The name and address of any health care provider known by the
45 petitioner to be providing health care to the principal.

1 3. A description or a copy of the health care directive.

2 4. The judicial relief sought by the petitioner.

3 C. ON THE FILING OF THE PETITION THE COURT SHALL ENTER A TEMPORARY
4 ORDER DIRECTING COMPLIANCE WITH SECTION 36-3203, SUBSECTION E. NOTICE OF
5 THIS ORDER SHALL BE PROVIDED BY PERSONAL SERVICE ON THE SURROGATE, THE
6 PATIENT, THE HEALTH CARE PROVIDERS IMMEDIATELY RESPONSIBLE FOR THE PATIENT'S
7 CARE AND OTHER PERSONS THE COURT REQUIRES TO BE NOTIFIED.

8 ~~C.~~ D. The court shall review the petition, any other pleadings on
9 file and any evidence offered by the petitioner to determine if it should
10 order temporary orders without a further hearing. The court may enter a
11 temporary order directing the provision or the withholding of specific
12 medical treatment pending a further hearing if the court determines that
13 there is reasonable cause to believe that health care decisions are being
14 made by a surrogate or a health care provider that derogate the patient's
15 wishes or, if the patient's wishes are not known, the patient's best
16 interests.

17 ~~D.~~ E. The court shall schedule and conduct a hearing within five
18 working days of the filing of a petition. Notice shall be provided by
19 personal service on the surrogate, the patient, the health care providers
20 immediately responsible for the patient's care, and other persons the court
21 requires to be notified.

22 ~~E.~~ F. On the filing of the petition the court may:

23 1. Appoint an attorney for the patient if it appears that this is in
24 the patient's best interests.

25 2. Appoint an investigator as provided under section 14-5308 or a
26 physician, or both, to evaluate the patient and submit a written report to
27 the court before the hearing.

28 3. Enter other temporary orders that the court determines are
29 necessary and appropriate to protect the wishes or the best interests of the
30 patient, including an order exercising the power of a guardian or appointing
31 a temporary guardian as provided under section 14-5310.

32 ~~F.~~ G. A person filing a petition under this section is not required
33 to post a bond unless the court determines that a bond is necessary to
34 protect the interests of any party.

35 ~~G.~~ H. On notice and a hearing, the court may enter appropriate orders
36 to safeguard the wishes of the patient. If the court is unable to determine
37 those wishes, the court may enter appropriate orders to safeguard the
38 patient's best interest. These orders may include:

39 1. Appointing a surrogate if the procedural requirements of title 14,
40 chapter 5, article 3 have been met.

41 2. Removing an agent or any other surrogate and appointing a
42 successor.

43 3. Directing compliance with the terms of the patient's health care
44 directive including the provisional removal or withholding of treatment if

1 the court finds that this conforms with the patient's wishes or, if the
2 patient's wishes are not known, is in the patient's best interest.

3 4. Directing the transfer of the patient to a suitable facility or to
4 the care of a health care provider who is willing to comply with the
5 patient's wishes.

6 5. Assessing court costs and attorney fees against a party found to
7 have proceeded in bad faith.

8 ~~H.~~ I. Notwithstanding a person's incapacity, the court may deny a
9 petition to appoint a guardian for that person based on the existence of a
10 valid and unrevoked health care directive.

11 ~~I.~~ J. A guardian appointed pursuant to this section is immune from
12 civil and criminal liability to the same extent as any other surrogate
13 pursuant to section 36-3203, subsection D.

14 Sec. 3. Section 36-3231, Arizona Revised Statutes, is amended to read:

15 36-3231. Surrogate decision makers; priorities; limitations

16 A. If an adult patient is unable to make or communicate health care
17 treatment decisions, a health care provider shall make a reasonable effort to
18 locate and shall follow a health care directive. A health care provider
19 shall also make a reasonable effort to consult with a surrogate. If the
20 patient has a health care power of attorney that meets the requirements of
21 section 36-3221, the patient's designated agent shall act as the patient's
22 surrogate. However, if the court appoints a guardian for the express purpose
23 of making health care treatment decisions, that guardian shall act as the
24 patient's surrogate. If neither of these situations applies, the health care
25 provider shall make reasonable efforts to contact the following individual or
26 individuals in the indicated order of priority, who are available and willing
27 to serve as the surrogate, who then have the authority to make health care
28 decisions for the patient and who shall follow the patient's wishes if they
29 are known:

30 1. The patient's spouse, unless the patient and spouse are legally
31 separated.

32 2. An adult child of the patient. If the patient has more than one
33 adult child, the health care provider shall seek the consent of a majority of
34 the adult children who are reasonably available for consultation.

35 3. A parent of the patient.

36 4. If the patient is unmarried, the patient's domestic partner if no
37 other person has assumed any financial responsibility for the patient.

38 5. A brother or sister of the patient.

39 6. A close friend of the patient. For the purposes of this paragraph,
40 "close friend" means an adult who has exhibited special care and concern for
41 the patient, who is familiar with the patient's health care views and desires
42 and who is willing and able to become involved in the patient's health care
43 and to act in the patient's best interest.

44 B. If the health care provider cannot locate any of the people listed
45 in subsection A of this section, the patient's attending physician may make

1 health care treatment decisions for the patient after the physician consults
2 with and obtains the recommendations of an institutional ethics committee. If
3 this is not possible, the physician may make these decisions after consulting
4 with a second physician who concurs with the physician's decision. For the
5 purposes of this subsection, "institutional ethics committee" means a
6 standing committee of a licensed health care institution appointed or elected
7 to render advice concerning ethical issues involving medical treatment.

8 C. A person who makes a good faith medical decision pursuant to this
9 section is immune from liability to the same extent and under the same
10 conditions as prescribed in section 36-3205.

11 ~~D. A surrogate who is not the patient's agent or guardian shall not~~
12 ~~make decisions to withdraw the artificial administration of food or fluid.~~

13 ~~E.~~ D. A surrogate may make decisions about mental health care
14 treatment on behalf of a patient if the patient is found incapable. However,
15 a surrogate who is not the patient's agent or guardian shall not make
16 decisions to admit the patient to a level one behavioral health facility
17 licensed by the department of health services, except as provided in
18 subsection F of this section or section 14-5312.01, 14-5312.02 or 36-3281.

19 ~~F.~~ E. If the admitting officer for a mental health care provider has
20 reasonable cause to believe after examination that the patient is incapable
21 as defined in section 36-3281, subsection D and is likely to suffer serious
22 physical harm or serious illness or to inflict serious physical harm on
23 another person without immediate hospitalization, the patient may be admitted
24 for inpatient treatment in a level one behavioral health facility based on
25 informed consent given by any surrogate identified in subsection A of this
26 section. The patient shall be discharged if a petition for court ordered
27 evaluation or for temporary guardianship requesting authority for the
28 guardian to consent to admission to a level one behavioral health facility
29 has not been filed within forty-eight hours of admission or on the following
30 court day if the forty-eight hours expires on a weekend or holiday. The
31 discharge requirement prescribed in this section does not apply if the
32 patient has given informed consent to voluntary treatment or if a mental
33 health care provider is prohibited from discharging the patient under federal
34 law.