

REFERENCE TITLE: patient care; presumptions

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

# HB 2823

Introduced by  
Representative Stump

AN ACT

AMENDING SECTIONS 36-3203 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. A SURROGATE WHO IS NOT THE PATIENT'S AGENT OR GUARDIAN SHALL NOT  
33 MAKE DECISIONS TO WITHDRAW THE ARTIFICIAL ADMINISTRATION OF FOOD OR FLUID.

34 Sec. 2. Section 36-3231, Arizona Revised Statutes, is amended to read:

35 36-3231. Surrogate decision makers; priorities; limitations

36 A. If an adult patient is unable to make or communicate health care  
37 treatment decisions, a health care provider shall make a reasonable effort to  
38 locate and shall follow a health care directive. A health care provider  
39 shall also make a reasonable effort to consult with a surrogate. If the  
40 patient has a health care power of attorney that meets the requirements of  
41 section 36-3221, the patient's designated agent shall act as the patient's  
42 surrogate. However, if the court appoints a guardian for the express purpose  
43 of making health care treatment decisions, that guardian shall act as the  
44 patient's surrogate. If neither of these situations applies, the health care  
45 provider shall make reasonable efforts to contact the following individual or

1 individuals in the indicated order of priority, who are available and willing  
2 to serve as the surrogate, who then have the authority to make health care  
3 decisions for the patient and who shall follow the patient's wishes if they  
4 are known:

5 1. The patient's spouse, unless the patient and spouse are legally  
6 separated.

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

10 3. A parent of the patient.

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

13 5. A brother or sister of the patient.

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

19 B. If the health care provider cannot locate any of the people listed  
20 in subsection A of this section, the patient's attending physician may make  
21 health care treatment decisions for the patient after the physician consults  
22 with and obtains the recommendations of an institutional ethics committee. If  
23 this is not possible, the physician may make these decisions after consulting  
24 with a second physician who concurs with the physician's decision. For the  
25 purposes of this subsection, "institutional ethics committee" means a  
26 standing committee of a licensed health care institution appointed or elected  
27 to render advice concerning ethical issues involving medical treatment.

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

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

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

39 ~~F.~~ E. If the admitting officer for a mental health care provider has  
40 reasonable cause to believe after examination that the patient is incapable  
41 as defined in section 36-3281, subsection D and is likely to suffer serious  
42 physical harm or serious illness or to inflict serious physical harm on  
43 another person without immediate hospitalization, the patient may be admitted  
44 for inpatient treatment in a level one behavioral health facility based on  
45 informed consent given by any surrogate identified in subsection A of this

1 section. The patient shall be discharged if a petition for court ordered  
2 evaluation or for temporary guardianship requesting authority for the  
3 guardian to consent to admission to a level one behavioral health facility  
4 has not been filed within forty-eight hours of admission or on the following  
5 court day if the forty-eight hours expires on a weekend or holiday. The  
6 discharge requirement prescribed in this section does not apply if the  
7 patient has given informed consent to voluntary treatment or if a mental  
8 health care provider is prohibited from discharging the patient under federal  
9 law.